

UNITED STATES DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:)
) Docket Nos. 22-J0011
PROPOSED AMENDMENTS TO THE) AMS-SC-22-0010
MARKETING ORDER REGULATING) SC-22-981-1
WALNUTS GROWN IN CALIFORNIA)

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 WALNUTS GROWN IN CALIFORNIA)

Remote Hearing
 Heritage Reporting Corp.
 1220 L Street NW, Suite 206
 Washington, DC 20005

Tuesday,
 April 19, 2022

The parties met remotely, pursuant to the notice,
 at 11:00 a.m.

BEFORE: HONORABLE CHANNING D. STROTHER
 Chief Administrative Law Judge

APPEARANCES:

On behalf of the U.S. Department of Agriculture:

RUPA CHILUKURI, Esquire
 CHRISTY PANKEY, Esquire
 United States Department of Agriculture
 1400 Independence Avenue, S.W.
 Washington, D.C. 20250
 (202) 772-1169

On Behalf of the California Walnut Board:

HEATHER DONOHO, Esquire
 DANA HULL, Esquire
 101 Parkshore Drive
 Suite 250
 Folsom, California 95630
 (916) 932-7070

Heritage Reporting Corporation
 (202) 628-4888

Also Present:

GERONIMO QUINONES, USDA
ANDREW HATCH, USDA
DON HINMAN, USDA
PUSHPA KATHIR, USDA
FRANK GUERRA, USDA
RACHEL GOODHUE, PH.D., CWB
MICHAEL POINDEXTER, CWB

C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>For the USDA:</u>					
Donald Hinman	30	--	--	--	--
<u>For the California Walnuts Board:</u>					
Mike Poindexter	41, 54	--	--	--	--
Jack Mariani	116	121	149	--	--
Eric Heidman	152	158	--	--	--
Chuck Crain	180	184	--	--	--
William Carriere	233	--	--	--	--
Frank Guerra	250	--	--	--	--
William Tos	264	266	--	--	--

E X H I B I T S

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
7	32	39
8	32	39
9	42	114
10	42	114
11	149	149
12	178	178
13	226	226
14	249	249
15	262	262
17	272	272

P R O C E E D I N G S

(11:11 a.m.)

1
2
3 CHIEF JUDGE STROTHER: Okay. I -- I didn't see
4 it on the website, but I may not have been in the right
5 place. Yeah, okay. Cool.

6 MR. HATCH: I also have the initial documents,
7 the USDA exhibits and I can share those when the time comes
8 when we go through those documents.

9 CHIEF JUDGE STROTHER: Excellent. Yeah, I see
10 those on the website. What I don't see on the website is
11 order of witnesses.

12 MR. HATCH: Okay.

13 CHIEF JUDGE STROTHER: That -- that does not have
14 a hyperlink to it.

15 MR. HATCH: Okay. We can work with the public
16 affairs staff and AMS and have post this document.

17 CHIEF JUDGE STROTHER: Sure. All right. Should
18 we get started?

19 MR. HATCH: Yes, sir.

20 CHIEF JUDGE STROTHER: All right. I guess time
21 to read my opening remarks. Do we have everyone on that
22 needs to be on? It's 11:12.

23 MR. HATCH: The -- the Board staff, USDA
24 attorneys, Marketing Order Personnel and the Judge and the
25 officer are labeled as panelists for today and are able to

1 communicate or dispense who will be testifying later or
2 attendees and will be elevated to panelists when that
3 moment comes.

4 CHIEF JUDGE STROTHER: Okay. Sounds good.
5 Sounds like we're ready to go, so I'll go ahead and give my
6 lengthy introduction, how about that? All right. Good
7 morning, everyone. Thanks for joining us here. I'm
8 Channing Strother, Chief Administrative Law Judge at the
9 United States Department of Agriculture. In this capacity,
10 I will be presiding over today's hearing. By the way, we
11 do have the hearing reporter, right?

12 MR. HATCH: Yes, we do.

13 CHIEF JUDGE STROTHER: Excellent. Can -- can you
14 hear us, Ms. Feldman?

15 THE COURT REPORTER: Yes, I can. Thank you.

16 CHIEF JUDGE STROTHER: Great. Okay. And if
17 anything comes up, you'll let us know. Certainly, it's
18 pretty important that you stay connected and be able to
19 hear us and all. Just interrupt anything we're doing for
20 that. Anyway, in this capacity as chief administrative law
21 judge at USDA, I'll be presiding over today's hearing.
22 We've gathered in this virtual setting to conduct an
23 amendatory hearing on recommended changes to the federal
24 marketing order for California Walnuts. This proceeding
25 has been assigned the following docket or case numbers, 22-

1 J0011, AMS-SC-22-0010 and SC-22-981-1.

2 The California Walnut Board locally administers
3 the marketing order program. The regulations for which are
4 contained in Title 7 in the Code of Federal Regulations,
5 Part 984. The Board has recommended the amendments that we
6 will be discussing during this hearing. The Federal
7 Register notice containing these proposed amendments was
8 published on April 1, 2022. It appears at 87 Federal
9 Register Page 19020. As required by 7CFR Section 900.8C1,
10 this federal register notice will later be put into the
11 record as an exhibit.

12 As set out in that notice, the proposed
13 amendments would amend Federal Marketing Order 984 to do
14 several things: One, to eliminate the current requirement
15 for mandatory inspection and certification of in-shell and
16 shelled walnuts and of shelled walnuts for processing.
17 Two, create a new mechanism for determining and collecting
18 handler assessments and add authority for the Board to
19 charge for late payments and finally, to remove the USDA
20 Secretary's volume control authority. The proposal also
21 includes several conforming changes necessary to effectuate
22 those amendments to the marketing order. The purpose of
23 this hearing is for the USDA to gather testimony and other
24 evidence in support of or in opposition to the Board's
25 recommendation.

1 My role as presiding administrative law judge is
2 to ensure the hearing adheres to the procedures prescribed
3 in Title 7 in the Code of Federal Regulations, Part 900,
4 entitled, "General Regulations: Procedural requirements
5 governing proceedings pertaining to marketing agreements
6 and marketing orders." Additionally, it is my
7 responsibility to ensure that the information gathered
8 during this hearing is pertinent to the subject matter of
9 the aforementioned Federal Register notice.

10 If a witness makes comments or testifies to
11 subject matter outside the scope of the contents of the
12 Federal Register Notice, I have authority to interrupt and
13 not allow the witness to continue. However, I will not be
14 issuing a decision at the conclusion of this hearing. USDA
15 will refer to the information gathered during this hearing
16 in determining whether or not to move forward with the
17 Board's recommendation. By law and regulation, the USDA
18 oversees the Board's activities to ensure compliance with
19 the applicable laws, regulations and policies and it
20 conducts rule-making proceedings, such as this one.

21 I will administer the hearing to allow for
22 testimony from or on behalf of interested parties, cross-
23 examination of witnesses by interested parties or their
24 representatives and submission of supporting documents as
25 evidence, all as specified in Title 7 of the Code of

1 Federal Regulations, Part 900. To do this -- by the way,
2 Ms. Feldman's name is -- is on my screen. That doesn't
3 indicate that she's trying to reach us, does it?

4 MR. HATCH: No, sir.

5 CHIEF JUDGE STROTHER: I'll -- I'll assume not.
6 Very -- very well. To do this, USDA has established the
7 procedural guidelines which are posted on the website,
8 [www.ams.usda.gov/rules-](http://www.ams.usda.gov/rules-regulations/MOA/984californiawalnuts/2022hearingoverview)
9 [regulations/MOA/984californiawalnuts/2022hearingoverview.](http://www.ams.usda.gov/rules-regulations/MOA/984californiawalnuts/2022hearingoverview)

10 And these procedural rules will also be posted on
11 the shared desktop in Zoom during our breaks, but I will go
12 over them a bit now. While using this video virtual
13 platform, certain people will be visible on the screen at
14 any given moment as the hearing progresses: myself,
15 attorneys, the Board manager and the person giving the
16 testimony are speaking. Members of the audience will not
17 be visible during the hearing, unless they elect to
18 question the witness or volunteer to testify or have
19 otherwise been recognized to speak.

20 Similarly, only certain people have their
21 microphones activated: myself, the USDA team, certain Board
22 personnel, the witness testifying and during direct or
23 cross-examination, the person asking questions and the
24 witness responding to those questions. All other
25 participants lines will be muted during the hearing. As an

1 initial step, we have notices of appearances. We'll do
2 this for all USDA personnel, including technical support
3 folks of all industry proponents so that we are all aware
4 of who will be managing different functions of this
5 proceeding.

6 Each will be asked to state and spell their name,
7 give their professional title and describe their role
8 during the hearing, including on behalf of whom they are
9 speaking. Through our preregistration process, we have
10 developed a list of witnesses desiring to testify. I will
11 call those witnesses in order as they appear on that list
12 as it has been presented to me, as it also appears on the
13 website as aforementioned. Prior to testifying, each
14 witness will be sworn in and asked to state and spell their
15 name for the hearing record. The regulations also require
16 that a witness provide their occupation and address. In
17 deference to concerns about public disclosure of personal
18 protected information, I'm going to ask that each witness
19 not divulge an address that is the address of a personal
20 residence, but please ensure that the court reporter has a
21 working regular post office address for you.

22 At the beginning of each witness's statement, the
23 witness should identify all exhibits that they will refer
24 to during their testimony so that the USDA Zoom technical
25 team can prepare to share those exhibits with participants

1 via Zoom. USDA employees supporting this hearing will
2 manage Zoom functions and present documentary evidence for
3 everyone's access through the share screen function in
4 Zoom.

5 Witnesses and cross-examiners are asked to refer
6 to exhibit documents by the established exhibit numbers so
7 that the USDA team can retrieve those documents and make
8 them visible on the screen. Once a witness has finished
9 making his or her statement, I will officially enter those
10 exhibits into the record, subject to any objections made by
11 any other participant at the time. As noted, it is part of
12 my duties to exclude irrelevant or immaterial testimony or
13 exhibits. I will also preclude unduly repetitious
14 testimony or questioning. To avoid repetition, I ask that
15 any person seeking to question a witness be online for and
16 listen carefully to the entirety of that witness's
17 testimony that takes place before questioning and to all
18 questioning before that questioner has a turn.

19 Objections to testimony and exhibits may be made
20 by clicking on the raise hand function located at the
21 bottom of the Zoom screen by entering objection in the Zoom
22 Q&A text box or, if participating by telephone, by sending
23 a text message with the word objection, and I'd put it in
24 all caps, too, with your first and last name to 202-891-
25 8890. The USDA team will then enable the individual's

1 microphone once I call on the individual to speak on the
2 record. An objection in this proceeding is distinct from a
3 laymen's definition of objection. You may make an
4 objection if you believe there is some violation of a
5 procedural rule.

6 For example, if you believe an exhibit should not
7 be offered into the record because you believe it is not
8 authentic, not relevant or otherwise not material to the
9 subject matter of the hearing, in those instances, you may
10 object on those bases. Objections are not testimony and
11 are not cross-examination. If you would like to testify or
12 cross-examine witnesses, there are other mechanisms, as we
13 are discussing now you can use. You cannot use objections
14 to testify or cross-examine witnesses. They are not part
15 of the factual record -- not part of the record in this
16 proceeding, except as objections.

17 I may also interject on my own without an
18 objection being made by a participant. As I previously
19 indicated, the regulations provide that I may limit the
20 testimony of witnesses to avoid unduly cumulative or
21 unnecessarily collaborative testimony, easy for me to say,
22 7CFR, Section 900.D1ii.

23 Participants and witnesses are to address each
24 other through me. That is talk to me, don't talk to the
25 other people in the room. I will facilitate the

1 communication. In terms of direct and cross-examination,
2 after a witness has completed delivering his or her
3 prepared materials, the party offering the witness, either
4 members of the USDA or the proponent industry, will be
5 given the first opportunity to ask the witness questions.

6 Once finished, I will give the party not offering
7 the witness either members of the proponent industry or
8 USDA an opportunity to ask questions of the witness. After
9 both USDA and the industry proponent have completed their
10 questioning, I will provide members of the audience an
11 opportunity to ask questions. I will begin by asking
12 members of the audience participating via Zoom to indicate
13 they have a question by clicking on the raised hand
14 function located at the bottom of the screen or indicating
15 questions in the Q&A text box in Zoom.

16 Note that any questions entered in text in the
17 Zoom Q&A text box will not be part of the record, unless
18 the questioner is recognized to speak and asks the question
19 orally and on the record. The Zoom chat function will be
20 disabled throughout this proceeding. In any event, the
21 USDA technical team and I will call on each individual
22 audience member to speak by enabling the individual's
23 microphone.

24 Lastly, after the Zoom participants, I will give
25 members of the phone audience an opportunity to ask

1 questions. At that time, the phone lines will be unmuted
2 altogether and any person desiring to participate will be
3 asked to self-identify, stating and spelling his name and
4 identifying the affiliation, affiliation refers to
5 professional title, and the group or business you're
6 associated with, if any.

7 If a witnesses loses connectivity while speaking,
8 we will take a break until the witness can reestablish
9 contact and complete the testimony. If that proves to be a
10 cause for undue delay, I may determine to call the next
11 witness to testify and we can recall the original witness
12 at a later time. If a cross-examiner loses connectivity
13 while speaking, we'll take a break until the witness can --
14 if the cross-examiner loses connectivity while speaking, I
15 will ask that the USDA technical team work with the
16 individual to reestablish that connectivity. In the
17 interim, we may move on to the next cross-examiner.

18 We also welcome members of the public to offer
19 testimony and submit exhibits. After I finish these
20 opening remarks, I will give an opportunity for anyone in
21 attendance who has not already signed up to be a witness to
22 sign up to testify. Additional opportunities to sign up
23 will be given each day following the lunch break and before
24 the closing of the hearing. If I fail to do that, somebody
25 can hopefully remind me. During these instances, we will

1 unmute all participants' mics to allow persons to express
2 their interest in testifying. Additionally, individuals
3 may sign up to testify by sending USDA an email message
4 with their name and contact information to Lashawn Williams
5 at Lashawn, that's L-A-S-H-A-W-N (coughs), excuse me,
6 .williams@usda.gov.

7 If public members who are going to testify wish
8 to submit documents, including written testimony into
9 evidence, they should email them to
10 lashawnwilliams@usda.gov so that our technical team can
11 access the exhibits in time for that person's testimony and
12 post them to the USDA website. There can be up to an hour
13 delay between the time that the document is posted and when
14 it becomes actually available to the public via the
15 website.

16 USDA will, however, be able to project that
17 exhibit via the shared screen during a witness' testimony.
18 Any individuals accessing the hearing through audio only
19 will have the documents available to them on the agency's
20 website at the website I gave earlier. A court reporter is
21 transcribing verbatim the entire hearing. Even though each
22 speaker's name should appear on the screen as they speak,
23 please mention your full name for the hearing record at the
24 beginning of whatever you have to say to ensure accurate
25 attribution. I encourage all participants to speak clearly

1 and relatively slowly to ensure that the court reporter is
2 able to transcribe everything. In that -- in that regard,
3 I have to limit people from more than one person talking at
4 once, too. And the court reporter will remind me if she
5 has any problems at all with this. If the court reporter
6 should have difficulty hearing or understanding a witness,
7 she may interject and request assistance.

8 USDA will post the entire transcript of this
9 hearing to its website as quickly as possible. Zoom
10 provides full recording capabilities. USDA is recording
11 the hearing for in-house training purposes, however, that
12 audio-recording will not be made publicly available --
13 otherwise be made available to the participants. There
14 will be a time after the transcript is made available for
15 participants to submit proposed corrections to the
16 transcript. Corrections are limited to spelling or word
17 identification, typed corrections -- corrections may not
18 include a change to the actual testimony given by a
19 witness.

20 There will also be an opportunity for objections
21 to proposed transcript corrections. Once corrections are
22 accepted and the transcript is certified, participants will
23 have the opportunity to file briefs regarding proposed
24 findings of fact and conclusions of law, see 7CFR900.9D.
25 And those findings of fact and conclusions of law must be

1 based on hearing record that -- that we develop in this
2 proceeding. New evidence or alternative proposals may not
3 be included in those briefs. I would like the participants
4 to confer as to how to go about scheduling of transcript
5 corrections, objections and briefs. I am here to serve the
6 parties in that regard and to serve the USDA officials who
7 will write the decision.

8 We will be taking periodic breaks and will
9 certainly be taking a lunch break at my discretion. In
10 particular, I want to make sure that the hearing reporter
11 is not tiring and I want to take that into account. We
12 have two days scheduled for the hearing. If we finish in
13 advance of the close of business the second day, I expect
14 to close the hearing at that time.

15 As I mentioned, a summary of the procedural
16 guidelines for this hearing is posted on the website I
17 mentioned earlier and will also be posted on the shared
18 desktop during the breaks. If someone should need
19 technical assistance during the hearing, they may text or
20 phone Jeffrey Daniels -- Jeffrey Davis, rather, at 202-306-
21 2673. That concludes my preliminary remarks. Are there
22 any questions?

23 People understand, I guess, if they have
24 questions, I guess we use the raise hand function. All
25 right. Seeing none, I guess our next step is going to be

1 to have an entrance of appearances. Those that are taking
2 part in this proceeding will introduce themselves. Tell --
3 you know, give your -- give your name, spell your name, I
4 guess. Tell us why, you know, you're here, what you're
5 doing, your affiliation. And the rules require an address,
6 like I said before, don't give a home residence. Make sure
7 the hearing reporter does have that information, though.

8 If you've got some kind of business address, that
9 can -- that can go into the record. So are we ready to do
10 that? I guess we start with the board representatives. I
11 guess the board is unmuted.

12 MS. DONOHO: Yes. We're -- we're unmuted now.
13 I'm Heather Donoho. I am the -- the director of operations
14 for the California Walnut Board. Our address is 101
15 Parkshore Drive, Suite 250, Folsom, California 95630. And
16 I will be testifying and also acting as the industry
17 representative.

18 CHIEF JUDGE STROTHER: Thank you, Ms. Donoho.
19 Welcome.

20 MS. DONOHO: Thank you.

21 CHIEF JUDGE STROTHER: Anyone else for the board?
22 You're here by yourself, Ms. Donoho. Good. All right. Who
23 is here for USDA?

24 MS. CHILUKURI: Good morning. My name is Rupa
25 Chilukuri. You can see the spelling up there, but just to

1 make sure it's right, it's spelled R-U-P-A, C-H-I-L-U-K-U-
2 R-I. I am an attorney with the Office of the General
3 Counsel. I represent USDA, the Agricultural Marketing
4 Service. And my duty station or -- my duty station is the
5 Washington DC Headquarters. Thank you.

6 CHIEF JUDGE STROTHER: Thank you, counsel. Next
7 for USDA?

8 MR. HATCH: My name is Andrew Hatch, A-N-D-R-E-W,
9 last name H-A-T-C-H. I am deputy director of the Market
10 Development Division within the USDA's Agricultural
11 Marketing Service, 1400 Independence Avenue, Washington,
12 DC. I'm here facilitating the hearing as a document
13 curator and will be involved in helping prepare the
14 recommended decision later on.

15 CHIEF JUDGE STROTHER: Very well. Welcome Mr.
16 Hatch. thanks for all of your good work on all of the
17 technical aspects of this proceeding.

18 MR. HATCH: Thank you.

19 CHIEF JUDGE STROTHER: Anyone else for USDA?

20 MS. KATHIR: I am Pushpa Kathir. And my name is
21 spelled as P-U-S-H-P-A, last name K-A-T-H-I-R. I'm an
22 acting branch chief for the rule-making services branch in
23 the Marketing Development Division in Washington, D.C. I
24 helped with the preparation of this hearing and so on.

25 CHIEF JUDGE STROTHER: Thank you for joining us.

1 Anyone further from USDA?

2 MR. HINMAN: Oh -- oh, there's myself, Donald
3 Hinman, spelled D-O-N-A-L-D, H-I-N-M-A-N. I'm an economist
4 in the Agricultural Marketing Service, Special Crops
5 Division of the Market Development Division. The address
6 is the USDA Headquarters, 1400 Independence Avenue,
7 Southwest, Room 406, Washington, D.C. 20250. Thank you.

8 CHIEF JUDGE STROTHER: Thank you for joining us.
9 Is it mister or doctor?

10 MR. HINMAN: Let's go with mister. Thank you.

11 CHIEF JUDGE STROTHER: Okay, Mr. Hinman. Thank
12 you for being here. Next for USDA?

13 MR. QUINONES: Yes, my name is Geronimo Quinones.
14 It's spelled G-E-R-O-N-I-M-O, Q-U-I-N-O-N-E-S. And I'm a
15 marketing specialist for the Agricultural Marketing Service
16 here at USDA and will be asking questions today on behalf
17 of AMS.

18 CHIEF JUDGE STROTHER: Thank you for joining us
19 Mr. Quinones. Anyone further for USDA?

20 MS. PANKEY: Yes, hello. This is Christy that's
21 C-H-R-I-S-T-Y, P-A-N-K-E-Y. I am also an agricultural
22 marketing specialist with the Market Development Division.
23 I will be asking questions, cross-examining witnesses
24 during this proceeding and I will also be aiding in writing
25 the recommended decision.

1 CHIEF JUDGE STROTHER: Thank you for joining us,
2 Ms. Pankey. And next for USDA, if anybody? Okay. Anyone
3 in the Zoom audience that has -- has a role in this
4 proceeding that wants to introduce themselves? Anyone on
5 the telephone that should -- should introduce themselves at
6 this time? I guess we're unmuting everyone on the phone
7 for this purpose.

8 Okay. Hearing none, I guess the next order of
9 business is -- is --

10 MS. SANTANA: Chief Judge?

11 CHIEF JUDGE STROTHER: Yes.

12 MS. SANTANA: Marisa Santana, your attorney
13 advisor. I see a hand raised where is it Dana Hull and Ms.
14 Donoho. I'm not sure if they had someone else to
15 introduce.

16 MS. DONOHO: Yes, Your Honor, we -- we did. We
17 were muted quickly after I introduced myself, but we have
18 another staff member here who will be assisting with
19 technical issues for our industry members. And she needs
20 to introduce herself. May she do that?

21 CHIEF JUDGE STROTHER: Of course, Ms. Donoho.
22 Thank you. Sorry -- sorry to cut you off prematurely.

23 MS. DONOHO: It's okay. No problem.

24 MS. HULL: Hi, I'm Dana Hull. I'm executive
25 coordinator with the California Walnut Board, also at 101

1 Parkshore Drive, Suite 250, Folsom, California 95630. And
2 Hull is H-U-L-L.

3 CHIEF JUDGE STROTHER: Thank you, Ms. Hull. And
4 -- and we had someone else Ms. Santana or -- by the way,
5 Ms. Santana is my attorney advisor. She will be helping --
6 helping us here. Her address is the headquarters building.
7 She works with me as a part of the Office of Administrative
8 Law Judge.

9 MS. SANTANA: Thank you, Your Honor. That's the
10 only hand raised I saw.

11 CHIEF JUDGE STROTHER: Okay. I apparently don't
12 see -- I don't get to see what hands are raised, as far as
13 I can tell, but I don't think I need to. You can interrupt
14 me at any time. Okay. So I guess the next order of
15 business is we were going to see if there were any other
16 witnesses, if anyone else desired to present testimony.
17 The website's got a list of -- of witnesses at this point,
18 but we offer anyone else out there the opportunity to
19 testify if they so desire. And again, I can't see -- I
20 don't think I can see the hand raises, so somebody is going
21 to have to tell me if there are any.

22 MR. HATCH: This is Andy Hatch with the USDA.
23 Over the past several days, we've been monitoring emails
24 and phone calls for anybody who asked to be included in the
25 list of people giving testimony. We have not received any

1 such messages. The list of individuals is then accurate
2 that we showed up on the screen and I can show up on the
3 screen again.

4 CHIEF JUDGE STROTHER: Very well, okay. As I
5 said in the opening remarks, I will -- will periodically
6 offer anyone that's tuned in the opportunity to further
7 sign up in the various methods that I set out in these
8 preliminary discussions. All right. I think the -- I
9 think we're ready to swear in -- swear in the first
10 witness.

11 MS. CHILUKURI: Your Honor?

12 CHIEF JUDGE STROTHER: Yes.

13 MS. CHILUKURI: Your Honor, yes, thank you. I'm
14 sorry. I was hoping to enter some foundational exhibits
15 before we called USDA's first witness.

16 CHIEF JUDGE STROTHER: Sure. All right. Just so
17 it's clear to me and maybe clear on the record, is -- is
18 your -- is your witness sponsoring those -- those exhibits?
19 I mean I realize that you don't really need someone to
20 sponsor the Federal Register Notice that I see is on the
21 screen, but -- and I -- I don't have the website up for all
22 of the foundational exhibits, but is there anything that --
23 - is the witness sponsoring those exhibits?

24 MS. CHILUKURI: No, no. The witness would not be
25 sponsoring these initial exhibits. And as you said, they

1 are the -- the notice exhibits as it relates to the -- the
2 Federal Register Notice and things like that. We also
3 filed a notice of ex parte, so I wanted to discuss that
4 briefly on the record as well.

5 CHIEF JUDGE STROTHER: Very well.

6 MS. CHILUKURI: Okay, thank you.

7 CHIEF JUDGE STROTHER: Why don't you just
8 proceed, counsel? I guess -- I mean it seems excessive.
9 Perhaps we can go, you know, exhibit by exhibit, if
10 anyone's got an -- an objection when counsel has finished
11 the introduction, they can object to that exhibit right
12 then and there, but please proceed.

13 MS. CHILUKURI: Okay. Thank you. So as you
14 stated during your introductory remarks, these exhibits are
15 required by the regulation, specifically 7CFR900.4. So I
16 believe Mr. Hatch has pulled up Exhibit 1. Exhibit 1 is a
17 copy of the Federal Register Notice, which was published on
18 April 1, 2022. And this notice of hearing contains some
19 proposed regulatory text, so just for all of the witnesses,
20 feel free to refer to this notice in discussing the text or
21 if you want to -- want us to look at one of the specific
22 provisions.

23 So Mr. Hatch, if you could turn to the next --
24 well, I suppose I can offer this now if you'd like. Your
25 Honor, should I -- should I offer this now or would you

1 like me to go through the next three?

2 CHIEF JUDGE STROTHER: We'll go ahead and offer
3 it. Hearing no objections, Exhibit 1 is entered into
4 evidence.

5 MS. CHILUKURI: Thank you. So Mr. Hatch, if you
6 could go to Exhibit No. 2. And Exhibit No. 2 is a true
7 copy of the notice of hearing to interested persons, so
8 there's just a certificate of mailing that, in fact, the
9 notice of hearing has been sent to interested persons. And
10 I would like to offer this into evidence.

11 CHIEF JUDGE STROTHER: Any objections? Seeing
12 and hearing none, Exhibit No. 2 is entered into the record.

13 MS. CHILUKURI: Moving now to Exhibit 3. So
14 Exhibit 3 is just noting that there has been a press
15 release regarding the notice of hearing and this is a
16 certificate of the news release and I'd like to offer
17 Exhibit 3 into evidence.

18 CHIEF JUDGE STROTHER: Any objections? Seeing
19 and hearing none, Exhibit 3 is entered into the record.

20 MS. CHILUKURI: And now moving onto Exhibit 4,
21 that's a certificate of the officials notified regarding
22 this hearing. And at this time, I'd like to move for that
23 exhibit to be admitted to the record.

24 CHIEF JUDGE STROTHER: Any objections? Seeing
25 and hearing none, Exhibit 4 is entered into the record.

1 MS. CHILUKURI: Okay. So those were the
2 foundational exhibits, Your Honor. I alluded to a notice
3 regarding ex parte communications, so I wanted to discuss
4 that now. And just a reminder for all -- all participants,
5 notice of the hearing was published on April 1, 2022. So
6 from that date to the potential publication of the
7 Secretary's decision would be the ex parte period, so USDA
8 officials are prohibited -- USDA officials involved in the
9 decision-making process are prohibited from ex parte
10 communications regarding the merits of the proposal with
11 any interested party.

12 So we can discuss the substance or -- I'm sorry,
13 just to make clear, we cannot discuss the substance or the
14 merits of the proposals with you off the record, but if you
15 do have any procedural questions, we can discuss those. So
16 Exhibit 5 is an ex parte communication and 7CF900.16
17 governs ex parte communications, so the Department is
18 required to enter that onto the record and also we wanted
19 to briefly bring this up at the hearing. So basically, the
20 breach was there was an email communication from Ms. Donoho
21 of the California Walnut Board to Geronimo Quinones and
22 others at AMS regarding proposed exhibits and attaching
23 those exhibits.

24 So basically, she had referred to that there
25 would be some minor changes in testimony. So out of an

1 abundance of caution, we wanted to ensure that that email
2 and the attachments themselves of some of these testimony
3 were put into the record. So at this time, I'd like to
4 offer that that be admitted to the record.

5 CHIEF JUDGE STROTHER: Yes, I -- I agree with
6 counsel's description of the ex parte rules. Basically,
7 once -- once the notice went out, the time to discuss
8 substantive aspects of this proposal is on the record in
9 this -- well, generally on the record, but at -- at this
10 hearing so that -- so that everybody is there and can hear
11 and contribute and there's nothing that takes place behind
12 the scenes that the participants aren't generally aware of,
13 other than procedural type matters. So the proposal is to
14 put the notice of ex parte -- really notice of the
15 effectiveness of the ex parte rule into the record. Are
16 there any objections? Hearing none, Exhibit 5 is made a
17 part of this record.

18 MS. CHILUKURI: Okay. Thank you, Your Honor. And
19 we have one more exhibit that we'd like to discuss as a
20 preliminary matter. That is Exhibit 6. So we wanted to
21 talk about -- and I believe Mr. Hatch will be pulling up
22 Exhibit 6. And Exhibit 6 is a document with regulatory
23 text. And so there was -- as you can see, there is going
24 to be two columns and on the left-hand column, it shows
25 what 7CFR984.67 looks like currently in the code of federal

1 regulations. And then so as I understand it, some texts,
2 if you look to the left again, this is what is currently in
3 the CFR, so as I understand it, some text was inadvertently
4 omitted during a May 2020 rule-making.

5 So if you look at .67b, right after the
6 semicolon, there should be additional text and there is
7 not. So it should list the following types of exemptions.
8 It does not list the following types of exemptions. So it
9 was an error during the publication in May 2020. That
10 should've been corrected in the notice of hearing. It was
11 not corrected, so the highlighted language on -- well, I
12 suppose the entire right column is what should have been
13 proposed and the highlighted language is really what's been
14 -- what's been missing for -- for quite some time, I
15 suppose if it happened in May 2020. So we wanted to give
16 everyone an opportunity to discuss and refer to this
17 exhibit in the sense that it is within the scope of the
18 hearing as it relates to assessments and exemptions from
19 assessments, which some witnesses will be discussing.

20 But again, we wanted to give people an
21 opportunity to have this language up-front and refer to it
22 throughout the hearing as-needed. And obviously, if any
23 witnesses would like to speak to how this provision should
24 read or how they would like it to read, USDA would
25 appreciate hearing their thoughts. And I don't know that I

1 need to enter it into the record or move for it to be
2 admitted to the record, but I -- I suppose I will. So if -
3 - I'll offer that into the record as well.

4 CHIEF JUDGE STROTHER: I can't imagine it would
5 do any harm to put it into the record and this is all the
6 more public notice of this proposed correction to Section
7 984.67 where certain language was inadvertently left off.
8 It seems obvious that it was, considering that there is a
9 following types of exemptions followed by a -- by a colon
10 and then no -- no exemptions listed. Anyone have any
11 objections or comments on this Exhibit 6? Hearing no
12 objections, Exhibit 6 is made a part of this record.

13 MS. CHILUKURI: Thank you, Your Honor. Those are
14 all of the foundational and, I suppose, preliminary
15 exhibits that I wanted to discuss at this time. And we're
16 ready for our -- USDA's first and only witness.

17 CHIEF JUDGE STROTHER: Okay. So we're calling
18 Mr. Hinman to the stand?

19 MS. CHILUKURI: Yes, that's correct.

20 CHIEF JUDGE STROTHER: Okay. Mr. Hinman, are you
21 on?

22 MR. HINMAN: Yes. Yes, Your Honor, I am.

23 CHIEF JUDGE STROTHER: Okay. Very well. Let's
24 swear you in. Do you swear to tell the truth and nothing
25 but the truth? Do you swear or affirm to tell the truth or

1 nothing but the truth in your testimony today?

2 MR. HINMAN: I do.

3 CHIEF JUDGE STROTHER: Very well. Okay. Your
4 witness, counsel.

5 MS. CHILUKURI: Thank you, Your Honor.

6 Whereupon,

7 DONALD HINMAN

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

10 DIRECT EXAMINATION

11 BY MS. CHILUKURI:

12 Q So Mr. Hinman, can you tell us how long you've
13 been with USDA?

14 A Twenty-one years.

15 Q And what is your title?

16 A Economist.

17 Q And as an economist, what do you do at USDA?

18 A I compile statistics and data and write reports
19 based on that data for policy decisions within the
20 department, especially AMS.

21 Q And you've participated in formal rule-making
22 hearings like this before; is that correct?

23 A Yes, I have. Thanks.

24 Q And do you know how many times you've done that,
25 how many times you've participated in a formal rule-making

1 hearing?

2 A I'm going to have to guess about eight times over
3 21 years.

4 Q And -- okay. Thank you. And you have --

5 A That -- that is a rough guess.

6 Q Okay. Thank you.

7 A I wasn't -- I was not prepared for that question.

8 Q Have you prepared documents for this hearing?

9 A I have.

10 Q Okay. And can you tell us what those documents
11 are?

12 A Exhibits 6, 7 and 8, yeah.

13 Q 6, 7 and 8; is that correct?

14 A Yes.

15 Q So you'll be reading -- and Mr. Hatch will be
16 pulling those up as we -- as we talk, but you'll be reading
17 your statement into the record; is that right?

18 A That's correct.

19 Q And these exhibits that you refer to, 6, 7 and 8,
20 you personally prepared all of them; is that right?

21 A Yes, 7 and 8, I prepared myself, yes.

22 Q Okay. So when you're ready, feel free to read
23 those -- read those documents. Thank you.

24 //

25 //

1 (The documents referred to
2 were marked for
3 identification as Exhibits 6,
4 7, and 8.)

5 CHIEF JUDGE STROTHER: And just -- just for
6 clarity, counsel, Exhibit 7 is what we're referring to as
7 Mr. Hinman's statement, which is identified in the exhibit
8 list as Don Hinman USDA Walnut Testimony, Exhibit 7?

9 MS. CHILUKURI: Yes, Your Honor. I think I may
10 have misspoken and used the wrong numbers, but it would be
11 7 and 8, that's --

12 CHIEF JUDGE STROTHER: I'm not sure you did at
13 all, but that's -- that's the statement which is -- which
14 is the testimony and we'll just use those terms
15 interchangeably.

16 MS. CHILUKURI: Okay. And I believe, Mr. Hatch,
17 there -- there's some tables that Mr. Hinman will be
18 referring to, so I think Mr. Hatch may be -- I don't know
19 if he'll be flipping through or just focusing on the
20 tables, but I'll -- I'll let him decide what makes the most
21 sense.

22 CHIEF JUDGE STROTHER: All right.

23 MS. CHILUKURI: Thank you.

24 CHIEF JUDGE STROTHER: You may proceed, Mr.
25 Hinman.

1 THE WITNESS: Thank you, Your Honor. I'll be --
2 I'll be reading from Exhibit 7 here in my testimony and
3 referring to Exhibit 8, the tables. Good morning,
4 everyone. My name is Donald Hinman, D-O-N-A-L-D, H-I-N-M-
5 A-N. From June 2001 to the present, I have worked as an
6 economist for the U.S. Department of Agriculture,
7 Agricultural Marketing Service, Specialty Crops Program,
8 Market Development Division. My duties include preparing
9 economic and statistical analysis, which are used by
10 government officials to help administer federal programs
11 for fruits, vegetables, tree nuts and other specialty
12 crops. A large part of my work relates to federal
13 marketing orders. Prior to working for the Agricultural
14 Marketing Service, I taught economics at a University of
15 Wisconsin campus in Superior, Wisconsin.

16 For this hearing, I prepared a data compilation
17 with the title, "California Walnut Statistics Seasons 2001
18 to 2021-22." One data source is the National Agricultural
19 Statistic Service of the U.S. Department of Agriculture,
20 referred to by its acronym, NASS, N-A-S-S. Two other USDA
21 sources are the Foreign Agricultural Service, FAS, and the
22 Economic Research Service, ERS.

23 The purpose of this testimony is to introduce
24 U.S. Government data into the hearing record. These tables
25 are intended to be used by all parties involved in the

1 hearing in discussing and analyzing the merits of the
2 various proposed amendments. Page 1 shows the table of
3 contents. Now, I am turning to Page 2. Table 1 on Page 2
4 presents walnut acres, yield, production, price, comp value
5 and sales. The columns are -- are -- are numbered from one
6 to seven to make it easier to identify them. Column 1
7 presents bearing acres and column three shows the quantity
8 produced each year. Column 2 shows average yield per acre,
9 which is completed by dividing Column 3 by Column 1. The
10 quantity produced, shown in Column 3, is sold either
11 shelled or unshelled. Column 6 shows shelled sales and
12 Column 7 shows in-shell sales. Try to say that slowly.
13 Adding shelled sales in Column 6 and in-shell sales in
14 Column 7 equals total utilized production in Column 3.

15 Continuing to discuss Table 1 on Page 2, Column 1
16 shows that bearing acres increased every year since the
17 2001 season. Bearing acres rose from 300,000 acres in 2015
18 -16 to 385,000 acres in 2021 to 2022. Table 1, Column 3
19 shows that utilized production has exceed 400,000 tons
20 every year since 2008-'09 and has been greater than 600,000
21 tons every year beginning in 2015-16.

22 Table 1, Column 5 represents the comp value which
23 exceeded \$1 billion from 2010-11 to 2017-18 and again in
24 2019-20. The high crop value was \$1.9 billion in 2014-15.
25 The walnut crop value was about \$958 million in 2020-21

1 season. NAS estimates the season average global price
2 received by growers shown in Column 4 by dividing the comp
3 value in Column 5 by the product quantity in Column 3. The
4 2020-21 price of \$1,220 per ton was the lowest since 2003-
5 04 and represented a 35 percent decline from 2019-20.

6 Now I am turning to Page 3. Walnut export and
7 import quantities based on a September to August marketing
8 year were presented in Tables 2 and 3 on Page 3. This data
9 was obtained from a USDA Foreign Agricultural Service
10 database known as GATS, spelled G-A-T-S, which stands for
11 Global Agricultural Trade System. As with Table 1, the
12 quantities presented are in units of 1,000 tons. However,
13 the shelled export and import numbers are not converted
14 with in-shell basis.

15 Next, I turn to Page 4, Table -- both Table 4 and
16 5 on Page 6 represent the number of California walnut
17 farms, which was 5,676 in 2017. This was published by NAS
18 in the 2017 Agricultural Census, which is the most recent
19 census. Table 4 divides the 5,676 farms into 12 ranges of
20 acreage. The second row of Table 4 shows that there were
21 1,739 farms with acreage anywhere from 10 to 49.9 acres,
22 representing 31 percent of the farms. The last row in that
23 -- the last column in that row shows a cumulative
24 percentage of 53 percent. Cumulative percent includes the
25 percentages from previous rows. This table shows that 53

1 percent of the farms in 2017 had less than 50 acres of
2 walnuts. The second to the last row of Table 4 shows that
3 157 farms had 2,000 or more acres of walnuts representing 3
4 percent of all farms.

5 Table 5 divides the number of farms into 11
6 ranges of farm sales. The seventh row in the cumulative
7 percent column shows the number of 56 percent in the row of
8 annual sales from \$50,000 to \$99,999. This means that over
9 half of the farms in 2017 earned less than \$100,000 per
10 year from walnut sales. The 14 percent figure at the
11 bottom of the percent of total column shows that 14 percent
12 of the farms earned \$1 million or more in walnut sales.

13 Next, I turn to Page 5. Table 6 on Page 5
14 represents supply and utilization data prepared by the
15 USDA's economic research service. All numbers are on a
16 shelled basis and 1,000 pound units, which is different
17 from the quantity units in Tables 1 through 3. Total
18 supply is presented in Column 6. And total supply in
19 Column 6 is the sum of the numbers in Columns 3, 4 and 5,
20 which are marketable production imports and beginning
21 stocks. Ending stocks and exports are shown in Columns 7
22 and 8. Taking total supply of Column 6 and subtracting
23 ending stocks and exports equals domestic utilization
24 presented in Column 9.

25 Domestic utilization is an estimate of the

1 quantity of walnuts consumed within the U.S. market.
2 Dividing domestic utilization in Column 9 by the U.S.
3 population, which is not shown on the table yields per
4 capita utilization numbers in Column 10. The U.S. per
5 capita utilization of walnuts, also known as per capita
6 consumption has been close to one-half pound per person for
7 many years. This concludes my testimony.

8 CHIEF JUDGE STROTHER: Okay. Very well. Counsel
9 for USDA, I think it's your turn first. Basically, I
10 guess, this is a continuation of direct testimony.

11 MS. CHILUKURI: Yes, Your Honor. Thank you.

12 BY MS. CHILUKURI:

13 Q So Mr. Hinman, in preparing these documents, are
14 they -- do you have a position regarding the proposals in
15 the notice of hearing?

16 A I have no position.

17 Q So both opponent and proponents of the proposal
18 can refer to and use this data; is that correct?

19 A Yes. That -- that is our purpose, yes.

20 MS. CHILUKURI: Okay, okay. Thank you very much,
21 Mr. Hinman.

22 I have no further questions, Your Honor.

23 CHIEF JUDGE STROTHER: Actually, I had a quick
24 question. Mr. Hinman, did you give your educational
25 background?

1 THE WITNESS: I have a PhD in agricultural
2 economics from Michigan State University.

3 CHIEF JUDGE STROTHER: Well, in that case, you
4 will be Dr. Hinman for purposes of this proceeding. Thank
5 you.

6 THE WITNESS: Mister is informal enough. Thank
7 you.

8 CHIEF JUDGE STROTHER: Whatever your preference.
9 I think it's the California Walnut Board -- has the next
10 opportunity to ask questions.

11 MS. DONOHO: We have no questions, Your Honor.

12 CHIEF JUDGE STROTHER: Okay. We open the floor
13 to questions from the participants participating via Zoom.
14 Does anyone have any questions that's participating in this
15 proceeding via Zoom for Mr. Hinman? Hearing none, we move
16 to participants that are on the telephone. I guess we
17 unmute all of the lines and so that anyone can speak up.
18 Anyone on the telephone that desires to question Mr.
19 Hinman? Hearing -- hearing none, I think you can be
20 excused, Mr. Hinman. Thank you for your testimony today.

21 THE WITNESS: Thank you, Your Honor.

22 (Witness excused)

23 MS. CHILUKURI: Your Honor?

24 CHIEF JUDGE STROTHER: Yes.

25 MS. CHILUKURI: I'd like to move those exhibits,

1 7 and 8, into the record.

2 CHIEF JUDGE STROTHER: Any objection to the
3 admission of Dr. Hinman's Exhibit 7 and 8 to the record in
4 this proceeding? Did we put in actually the -- yeah, all
5 right, 7 is the statement and -- and 8, Tables 1 through
6 whatever they were are -- are -- I mean the Statement 7 in
7 the -- in the tables, the various tables, they all have the
8 same exhibit number. Very well. Any objection to the
9 admission of Exhibits 7 and 8 to the record in this
10 proceeding? Hearing none, those exhibits are admitted.

11 (The documents previously
12 identified as Exhibits 7 and
13 8 were received in evidence.)

14 CHIEF JUDGE STROTHER: All right. I think you
15 mentioned, counsel, that Mr. Hinman is the only witness for
16 USDA?

17 MS. CHILUKURI: Yes, that's correct.

18 CHIEF JUDGE STROTHER: Okay. We've really only
19 been going an hour here, so I would propose just to push
20 ahead and -- and not call for a break unless somebody is
21 feeling the need.

22 Ms. Feldman, our hearing reporter, are you doing
23 all right?

24 THE COURT REPORTER: I'm doing just fine, Judge.
25 Thank you.

1 CHIEF JUDGE STROTHER: Great. All right. So I
2 think the next witness on our witness list is Mike
3 Poindexter for the California Walnuts Board. Do we have
4 someone that wants to call Mr. Poindexter to the stand or
5 should I just swear him in, assuming he can hear me at this
6 point?

7 MS. DONOHO: If you would like to just swear him
8 in, Your Honor, that would be fine. Thank you.

9 (Background noise)

10 CHIEF JUDGE STROTHER: Okay. Sorry. Okay. Mr.
11 Poindexter, can you hear me because I can't hear Mr.
12 Poindexter.

13 MS. HULL: I think he needs to be promoted to a
14 panelist. I don't see --

15 MR. POINDEXTER: Oh, there. There, I -- I was
16 muted. Can you hear me now?

17 MS. HULL: Okay.

18 CHIEF JUDGE STROTHER: Yes, I can.

19 MR. POINDEXTER: I think I tried to unmute myself
20 and did the opposite.

21 CHIEF JUDGE STROTHER: Very well. We can
22 certainly hear you now. Thank you. Okay.

23 Mr. Poindexter, do you solemnly swear or affirm
24 that the testimony you are about to give at this hearing
25 shall be the truth and nothing but the truth under penalty

1 of perjury?

2 MR. POINDEXTER: I -- I swear.

3 CHIEF JUDGE STROTHER: Very well. The witness is
4 available to be examined by California Walnuts Board or
5 simply to give testimony without questioning, whichever --
6 whichever the California Walnuts Board prefers.

7 MS. DONOHO: I think the witness is prepared to
8 give testimony at this time.

9 CHIEF JUDGE STROTHER: You may proceed, Mr.
10 Poindexter.

11 Whereupon,

12 LATHA MICHAEL POINDEXTER

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

15 DIRECT TESTIMONY

16 THE WITNESS: Okay. My full name is Latha
17 Michael Poindexter. I go by Mike Poindexter. I am the CEO
18 and co-owner, third generation of a family-owned and
19 operated nut company, Poindexter Nut Company here in Selma,
20 California.

21 Today, I'm testifying as a large handler, I am
22 also a walnut grower, but primarily as a large handler. I
23 am on the Walnut Board and serve on several committees for
24 the board, including the Marketing Order Revision Committee
25 and Grades and Standards. And I have a PowerPoint

1 presentation to discuss the California Walnut Board and our
2 industry in some more detail.

3 CHIEF JUDGE STROTHER: Okay. Do you have an
4 address?

5 THE WITNESS: Yes. The address here is 5414 East
6 Floral Avenue, F-L-O-R-A-L, in Selma, S-E-L-M-A, California
7 93662.

8 CHIEF JUDGE STROTHER: Very well. And I guess
9 spell your -- spell your last name for the record.

10 THE WITNESS: P-O-I-N-D-E-X-T-E-R.

11 CHIEF JUDGE STROTHER: Thank you. Okay. Let's
12 get your first proposed exhibit up on the screen.

13 THE WITNESS: Okay.

14 CHIEF JUDGE STROTHER: This is -- I'm having
15 trouble shifting back and forth between the web page and
16 the screen. Hold on.

17 THE WITNESS: Okay.

18 CHIEF JUDGE STROTHER: Gotcha. All right. Your
19 testimony is Exhibit 9. You have a PowerPoint exhibit
20 that's Exhibit 10. It's obviously got some pages to it,
21 but very well. All right. You may continue, Mr.
22 Poindexter.

23 (The documents referred to
24 were marked for
25 identification as Exhibits 9

1 and 10.)

2 THE WITNESS: Okay. So I'd like to do a little
3 presentation about the Walnut Board and the industry in
4 general, if we can move to Slide 4. So the Federal
5 Marketing Order started -- established in 1948 for
6 representing growers and handlers was established for the
7 California Walnuts. The funding is by assessment to
8 provide for marketing, production and post-harvest
9 research, setting grades and standards for the industry and
10 regulatory monitoring and support industry education and we
11 have USD oversight for the California Walnut Board.

12 In structure, we have the board members and
13 officers up at the top. Underneath them are committees.
14 We've got the executive committee, market development,
15 grades and standards, audit, diversity, export, industry
16 communications and the marketing order revision committee.

17 Historically, the majority of the spend for the
18 California Walnut Board has been on domestic marketing,
19 approximately 80 percent of the budget. We've got
20 production research is the next largest slice at 8 percent,
21 operating and personnel at 7 percent and we have grades and
22 standards at 3 percent, surveys at 1 percent and also
23 industry communications and sustainability at 1 percent.

24 So moving -- moving into the industry, the
25 industry is layered at several tiers. At your -- at your

1 source tier, you have the producers, those are going to be
2 the farms that are growing the walnuts and most farmers do
3 not process their own product and introduce them in the
4 marketplace. That's handled by processors and handlers.
5 They will buy them from the walnut growers and taking that
6 product, they will do the additional value-added steps to
7 put the product into the channels of commerce. At which
8 point, they go into our customers and eventually on into
9 the end consumer.

10 Acreage, as has been shown by Mr. Hinman, similar
11 -- the exact same data, really. Acreage has been growing
12 steadily. This chart here goes back about 10 years and you
13 can see a constant increase in acreage with a slight
14 tapering off and leveling to a plateau period that we
15 expect to hit in the next coming years due to some low
16 pricing.

17 There is a five-to-seven-year gap between walnuts
18 being planted and coming into production, in full
19 production. And so the acreage seems to be a little bit
20 delayed on bearing acreage versus pricing effects in the
21 marketplace. So there's a bit of a delay in how long the
22 market reacts to these lower prices. Going to the next
23 slide, you can see our walnut production has been steadily
24 rising for the last -- the last decade and also rising
25 prior to that. There is a bit of an ultimate bearing

1 nature to the crop that does cause some instability in
2 pricing.

3 Fortunately, we do have a crop that has a longer
4 marketing cycle that we can have a carryover to mitigate
5 some of the -- some of the effects of this historically
6 ultimate bearing production, but still continuing to see an
7 increase in trends for the last decade and likely to be
8 increasing slowly over the next five years as well.

9 Next slide. So the new plantings, as you can
10 see, we have a lot of new plantings if we're going 2013 to
11 2016. Lower pricing after 2016 really did cut into the new
12 plantings rate and you can see a drop off there. There are
13 still new plantings coming in and we expect 36,000 new
14 acres to come into -- into production in the next three
15 years. These are all going to be high-yielding varieties,
16 so the effect of these acres are going to be enough to
17 offset in orchards coming out in the -- in the coming
18 years.

19 World production of walnuts has increased by
20 235,000 plus metric tons over the last five years. U.S. --
21 the U.S. crops are historically reported in short tons.
22 All world production is in metric tons, so we have to
23 convert a little bit. But you can see five years ago, the
24 U.S. was about 29 percent of the production in China, the
25 largest producer at 42 percent. That has moved to China

1 now at 49 percent with the USA at 27 percent, even with the
2 increase in production that we've had here in the U.S..
3 Chile has grown from 5 percent up to 7. The Ukraine has
4 shrunk from 7 percent down to about 4. France remains at
5 about 2 percent. Moldova has gone from 2 percent to 1
6 percent. And other countries, 13 percent down to 10
7 percent as the U.S. and China growth rates have
8 substantially increased and cut into their -- their portion
9 of the world market share.

10 So world trade over the last five years, USA,
11 even though it's the second largest producer, we are, by
12 far, the largest in the international trade, as a large
13 amount of the U.S. crop is exported and smaller amounts of
14 crops in other countries are exported. So China, although
15 they were a huge supplier or sorry, a huge grower five
16 years ago was only 2 percent of world trade, now, China is
17 13 percent of the world trade, where the U.S. has fallen
18 from 68 percent down to 54 percent of the -- the world
19 trade.

20 Chile has moved up from 13 percent to 16 percent.
21 The Ukraine has also increased from 7 percent to 9 percent.
22 France, relatively stable at -- going from 4 percent to 3
23 percent and all other countries combined going from 6 down
24 to 5. So it's a two-horse race on the production and
25 historically has been mostly driven by the U.S. on the

1 world trade, but we're seeing the U.S. market share on
2 world trade shrink as China and Chile have been coming on
3 very strong in their presence in the world trade.

4 So the top ten markets by destination.

5 Obviously, in this chart, you can see the U.S. is the
6 largest market by a large majority. The following markets,
7 after the U.S., although they are much smaller
8 collectively, they end up consuming the majority of the
9 U.S. crop. We've got Germany, Turkey and Japan in your
10 second to third -- South Korea, Spain, the UAE, Italy,
11 Canada and India. India, we do have some substantial
12 challenges going on there this year. We have a humongous
13 tariff that is causing that to drop dramatically. We will
14 see a much lower figure for India next season, but this is
15 for this last season and fairly consistent from year-to-
16 year.

17 Next slide, please. So growing regions, they're
18 all grown in -- almost all of the walnuts in the entire
19 country are grown in the Central Valley region of
20 California. We have the Sacramento Valley and the San
21 Joaquin Valley. The San Joaquin Valley is the largest
22 contiguous collection of class one soils in the world and
23 one of only five major Mediterranean climates that are
24 ideal for growing nuts. And so this right here really is
25 where all of the walnut production in the U.S. is likely to

1 remain forever. Top counties, San Joaquin, Butte,
2 Stanislaus, Tulare, Sutter, Tehama, Glenn, Yuba, Kings and
3 Colusa.

4 Over the past 10 years, we've seen the walnut
5 acreage slowly migrate to the north for better water. And
6 so we're going to continue to see a lot of growth up in the
7 northern part of the state, whereas the southern part of
8 the state is going to likely have fewer and fewer walnuts
9 as a percentage of the overall crop.

10 Next slide, please. So we have over 4,500 walnut
11 growers and only 86 processors. So the substantial amount
12 of capital investment required to bring the walnuts into
13 the commercial channels, that's too much for most walnut
14 growers to install. And so we have a lot of the growers
15 end up handling or selling their product to the larger
16 walnut processors that move the product into the commercial
17 marketplace. There's also one intermediate step not listed
18 here of the dehydrators. And we have, I think, maybe about
19 400 or so, I'd have to check that. But there's an
20 additional step that the walnuts have to go through prior
21 to going to the handlers after it comes off the farm.

22 And, again, that is another step where the number
23 of growers or the number of processors is reduced as they
24 try and consolidate for economies of scale in the further
25 processing of these nuts.

1 So the SBA defines the handler size as -- so
2 according to the USDA's National Association Statistic
3 Service 2017 Census of Agriculture, approximately 65
4 percent of California's walnut farms were smaller than 100
5 acres. In addition, NASS reports the average yield for
6 2018 was 1.93 tons per acre. Average price received for
7 the 2018 crop was \$1,300 per ton. A 100-acre farm with an
8 average yield of 1.93 tons per acre would have been
9 expected to produce about 193 tons of walnuts and at \$1,300
10 per ton, that farm's production would have an approximate
11 value of \$250,900. This is well below the SBA threshold of
12 \$1 million, so it can be concluded the majority of
13 California's walnut growers are considered small growers
14 according to the SBA definition.

15 According to information supplied by industry,
16 approximately 82 percent of walnut handlers shipped
17 merchantable walnuts valued under \$30 million during the
18 2018-19 marketing year and would, therefore, be considered
19 small handlers according to the SBA definition. Farm gate
20 value of walnuts, going back as 2008, you can see a
21 consistent trend from 2008 to 2014 and then a market
22 correction in 2015 lowered the price substantially on the
23 farm gate value. It continues to move back up and since
24 then has -- has not increased, even though we have an
25 increase in production of acreage. And now farm gate value

1 has been hovering close to \$1 billion, well below its peak
2 of \$1.9 billion six years ago or seven years ago.

3 So the cost of production and returns, there --
4 Mr. Donald Hinman had a great chart showing all of the
5 gross revenue on walnuts, but one thing that was missing
6 that I think is very important is the cost of production
7 per acre. For cost of production per acre, we have UC
8 Davis Cooperative Extension has a sample cost to establish
9 and produce English walnuts and we're using their cost of
10 production as a comparison for what the average walnut
11 grower should expect and what the net return per acre would
12 be. And where you see in 2007, for example, net return was
13 \$357 per acre and 2012-13, that jumped to \$2,200 to \$2,500
14 per acre. Don't have numbers for 2014, but you can see the
15 gross returns were still very strong and would expect to
16 have similar returns per acre.

17 However, costs have been going up over the years
18 and in 2015, you can see that the revenues did not cover
19 the cost of farming on walnuts. And so in 2015, the
20 average farmer would expect a \$1,136 loss per acre on the
21 production of their walnuts. The following year, although
22 we don't have cost of production per acre studies, we can
23 see that the gross returns did not substantially increase
24 and were still below the cost of production in the year
25 prior. And the trend for the cost of production continuing

1 to go up, we can be fairly certain that in 2016, it was
2 also a losing -- losing market for the walnut farmers and
3 in 2017 and 2018, also.

4 It should be noted if we go back to Mr. Hinman's
5 slides, you would find that 2019 and 2020 were also below
6 the cost of production for prior years. And so we're
7 looking at essentially six years of negative net returns
8 per acre for California walnut farmers, on average. And it
9 is something that does not look to be improved on this
10 season, either.

11 Next slide, please. So cost to produce walnuts
12 here. This is based on the University of California's
13 studies showing average tons per acre, the yields in pounds
14 per acre. And in the sample that's closest to that -- to
15 that NAS yield and sample costs associated with it showing
16 where the actual costs have been calculated out for the --
17 for the previous chart. The source of this is all from the
18 UC Davis and NASS.

19 So time line-wise, growing season starts in the
20 spring and continues on through the fall. So our walnuts
21 will -- will bloom and start their fertilization or their --
22 - the walnuts will start just a couple of weeks after
23 almonds. And so we've already gone through the capped in
24 (phonetic) process and now we're starting to see the
25 nutlets form. And the farming operation will continue all

1 the way through the fall and harvest, which will be
2 September for early varieties; October for later varieties
3 and continuing in, for some ranches, as late as November.
4 This brings a crop that takes us approximately 12 months to
5 process, market and ship. Although, the shipping challenge
6 has been a bit problematic and we expect that the shipping
7 season for any crop will drag on into the following season,
8 especially this year with what is projected to be the
9 second year in a row of all-time highest price or all-time
10 highest number of pounds of crop carried over.

11 Following slide, please. So the flow of the --
12 of the goods for our industry starts with the growing and
13 then after growing, we've got the harvesting. As soon as
14 they're harvested, they have to go through a huller and
15 dryer, which was a process I had mentioned earlier.

16 Walnuts when they come off the tree have a green husk that
17 has to be scraped off and they have too high of a moisture
18 for long-term storage, so they need to be dried as quickly
19 as possible to preserve the quality, to cut down on mold
20 and rancidity. The growers still own the walnuts at that
21 point. Only after they're hulled and dried are they taken
22 over -- are they transferred over to a processor, which
23 will buy them based on the clean, hulled and dried weight.

24 And then the processors will process them, store
25 them before and after their processing and value-added

1 steps. They will ship them into distribution, at which
2 point, the customers will finally receive the product. So
3 walnut shelf life, they generally have about a 12-month
4 shelf life from the time they're shelved. That can be
5 modified slightly through improved storage conditions or
6 negatively if storage conditions are not ideal. And cold
7 storage has enabled us to keep inventory on the market for
8 year-round -- year-round marketing and sales. And the
9 advancements we've had in processing and packaging
10 technologies are continuing to improve the product quality,
11 the consistency and the shelf life. However, it should be
12 noted that those advancements, some of them are quite --
13 quite expensive and do require a -- a financial component
14 of sustainability that we have not seen in the past several
15 years to justify the expenses that we're having. So we're
16 trying to find ways to save some cash on our processing.

17 Next -- next step or next slide, rather. So
18 California -- California walnuts are the number five export
19 for the state. Sixty-six percent of our crop is exported.
20 The U.S. is our largest market with one-third of our volume
21 going to the U.S. and two-thirds getting exported. We
22 provide approximately 85,000 jobs, both directly and
23 indirectly. And that's according to our walnut growers and
24 handlers in the state of California from Situnia (phonetic)
25 & Associates. And that concludes my presentation.

1 CHIEF JUDGE STROTHER: Okay. Thank you, Mr.
2 Poindexter. Since this is a California Water Board
3 witness, I think the California Water Board gets to
4 question first.

5 THE WITNESS: Walnut Board.

6 CHIEF JUDGE STROTHER: Oh, Walnut Board, I'm
7 sorry.

8 THE WITNESS: I'm not on the water board. I
9 don't have that much power.

10 CHIEF JUDGE STROTHER: (Laughter) I'm somewhat
11 familiar with water in California from an earlier --
12 earlier life and I understand -- and I understand that
13 reference, but you've got a lot of power today, so --

14 THE WITNESS: Thank you.

15 CHIEF JUDGE STROTHER: -- any -- anyone from the
16 California Walnut Board have any questions for Mr.
17 Poindexter?

18 MS. DONOHO: I do, Your Honor, have -- I have one
19 question.

20 CHIEF JUDGE STROTHER: Yes.

21 DIRECT EXAMINATION

22 BY MS. DONOHO:

23 Q Mr. Poindexter, can you speak to for your
24 organization the improvements in storage that enable you to
25 maintain such a high quality product?

1 A Yes. So -- so one of the things that -- that we
2 do here at my organization, we have -- when we expanded
3 back in 2014 and put in a very large cold storage that we
4 keep our walnuts between 35 and 40 degrees centigrade, 50
5 to 60 percent relative humidity. And we actually start
6 putting walnuts in cold storage as soon as we start
7 receiving the crop in the -- in the beginning of the
8 season.

9 When -- when processors have cold storage on
10 site, they tend to have some carryover inventory from the
11 prior year, but your warehouse is not full in September.
12 And so when you start bringing in new crop walnuts, you can
13 actually start putting them directly into cold storage as
14 soon as you receive them to preserve the quality and extend
15 the shelf life as long as possible. That's something
16 that's economically not as feasible if you're using outside
17 cold storage because it incurs a cost that you wouldn't
18 otherwise have to take on. But unlike the cold storage of
19 fresh fruit, where product is breaking down constantly and
20 has a -- a -- it continues to emit a thermal load, it has
21 to be offset by your chillers, walnuts don't really have
22 that issue. So once you get them cold, they, for the most
23 part, stay cold.

24 So the only real cost on putting product into the
25 cold storage is the initial cool-down. After that, your

1 costs are the same whether your cold storage is full or
2 empty. And so I think that most of the handlers in this
3 industry that have onsite cold storage fill up their cold
4 storage with new crop as soon as it comes in, to maximize
5 the quality of the -- of the walnuts.

6 And we also do some packaging that will increase
7 the shelf life as well. We can do vacuum packing. There
8 is a cost to that that consumers, we -- we ask them to pay
9 for that extra quality. Some do; some do not -- choose not
10 to. We have looked into other options for -- for
11 increasing shelf life, including modified atmosphere
12 storage. That does require a substantial capital
13 investment as storing that in bulk would require automation
14 of loading and unloading a chamber that would store that
15 because to modify the atmosphere would make it quite
16 dangerous for forklift drivers to enter and exit such a
17 warehouse space where they'd have to have some kind of
18 breathing apparatus if you don't have a high oxygen
19 environment like we normally do.

20 So there are a lot of other things that we looked
21 at for increasing shelf life. We use pasteurization as
22 well, low amounts of pasteurization; log reduction, four
23 logs or less. We have seen here on our machines that we've
24 been able to extend shelf life. We don't really get that
25 same kind of shelf life extension at five log reduction,

1 though we're always looking at ways we can get the walnuts
2 to have a longer shelf life and a better flavor because
3 that ultimately is something that is in our best interest
4 for our industry.

5 MS. DONOHO: Thank you. I have no further
6 questions.

7 CHIEF JUDGE STROTHER: Very well. USDA, I think
8 you're up next. Any questions from USDA for this witness,
9 Mr. Poindexter?

10 MR. QUINONES: Yeah, Your Honor. This is
11 Geronimo Quinones and I will be asking Mr. Poindexter some
12 questions.

13 CHIEF JUDGE STROTHER: Please proceed.

14 BY MR. QUINONES:

15 Q Good morning, Mr. Poindexter. How are you?

16 A I'm doing great now. I -- I always feel better
17 when people ask questions. If you don't ask questions, I -
18 - I wonder if my -- my presentation went on deaf ears or
19 something, so fire away.

20 Q Okay, cool. All right. Have you had an
21 opportunity to study the proposed amendments?

22 A I have.

23 Q Would you say that you understand them?

24 A As much as I can. You know, they get a little
25 bit -- a little bit in the jargon-ease. I'm -- I'm not

1 used to reading the documents of that kind. I'm more of a
2 plain-spoken type of person, but for the most part, I think
3 I understand just about everything in it.

4 Q Fair enough. And so would you say that you agree
5 with them the way they were set out in the notice of
6 hearing?

7 A Yes.

8 Q In your testimony, you said that you served on
9 the marketing order revision and the grades and standards
10 committees?

11 A Yes.

12 Q Were there any other committees that you served
13 on?

14 A Oh, I was on the production research committee
15 for -- briefly, doing some things. And I think those are
16 the only ones that I can remember. If I had any time on
17 some other committees, it was very short-lived. These were
18 the two that really kind of fit in my wheelhouse, for the
19 most part. And there's a limit to how much committee time
20 you can have before it impacts your ability to run your
21 business.

22 Q Fair enough. Could you explain your role on the
23 marketing order and revision committee?

24 A So there are things in the marketing order that,
25 from time-to-time, need to be updated. I mean, for

1 example, when this -- when the federal marketing order was
2 established in walnuts, they also established grades and
3 standards. And those grades and standards for what we have
4 to pack and the quality levels that we have to pack to,
5 those were set before the existence of laser sorters and
6 optical sorting machines.

7 You know, we didn't have so much of the
8 technology that we have today and yet, for the most part,
9 those standards have language in what I considered, you
10 know, the -- the ancient history. And so from time-to-
11 time, we need to look at the marketing order and find out
12 what we can do to raise the bar on certain areas where
13 technology has gotten better or the markets have changed to
14 require some adjustments on that. And, you know, I have --
15 I have some very strong opinions on things that need to be
16 added to the marketing order, or modifications that we need
17 to do, so that we are more proactive and less reactive in
18 our industry.

19 And so we have to look at any time that we want
20 to make an adjustment to that, unfortunately, it's a very
21 long, long drawn-out process. Any time you deal with
22 government organizations, it takes a lot longer to get
23 things changed than with a business where you can just make
24 a decision the following day, you have new -- new marching
25 orders. It's -- it's a lot slower to alter those things

1 here.

2 Q Okay. So would you also say that your role is
3 pretty similar on both of those committees, the marketing
4 order revision committee and the grades and standards
5 committee?

6 A Not exactly. So I mean the grades and standards
7 are part of what we set up for the marketing order. But
8 there are other things that we -- that we need to do on --
9 on marketing order revision that don't fall under the
10 purview of grades and standards. You know, we -- as -- as
11 an example, at one time, we looked at what it would take to
12 redefine what it is to be a processor. That ended up not
13 being something that was realistically feasible, you know,
14 but that's not a grades and standards issue, you know?

15 You know, so you could have things that have to
16 do with the marketing order that are not based on grades
17 and standards. One of the things we're looking at right
18 now is how we're going to be funding the California Walnut
19 Board. And I think that that is not a grades and standards
20 issue. That is something that the marketing order revision
21 committee would -- would do and not the grades and
22 standards committee.

23 Q Okay. Can you -- can you explain the selection
24 process for which those committees you serve on, like how -
25 - how were you selected to sit on these committees?

1 A To be honest, when I got on the Walnut Board,
2 these were the committees that were -- were assigned to me
3 and I don't think it -- I don't know what process they
4 used, but I've been in the walnut industry for 30 years.
5 And I've been in the industry for roughly 20 before I got
6 on the board and people pretty much knew me and knew where
7 my passion was. And, you know, if you want people to
8 perform well, you stick them where their passion is. And,
9 you know, grades and standards was right up my alley and I
10 had some things that I wanted to discuss on the marketing
11 order and what we would like to see changed on that. And
12 so those are the committees I was on, no complaints from me
13 on it. And yeah, I don't know what the actual process that
14 they used was, but then again, that was also 10 years ago
15 and I can barely remember what I ate for breakfast
16 yesterday.

17 Q In your opinion, do those committees broadly
18 represent all stakeholders in the industry?

19 A I think they do. You know, I think that we've
20 got a -- certainly grades and standards meets a lot more
21 than - than the marketing order revision committee. And we
22 absolutely have a -- a fairly good -- let's say an adequate
23 sampling of people in our industry. So we've got growers
24 and processors, large, medium and small, you know, voices
25 from -- from just about everybody on what they represent

1 and the marketing order revision committee, it -- I would
2 have to say yeah, that was -- would also be one that has
3 some good stratification of -- of growers, processors and -
4 - and sizes.

5 Q Okay. In regard to these proposed amendments,
6 could you describe some of the discussions that were had
7 during some of these committee meetings in which you -- in
8 which you participated in?

9 A Yeah. So we were talking about ways that we
10 could -- we could handle doing the assessments and some
11 things that we would like to have had done. I don't know
12 if we're -- I'm really supposed to be hearing some of the
13 discussions and -- and frustrations, but, you know, one of
14 the things that -- that I do remember very vividly, a
15 discussion on trying to just change it so that we could
16 have it where there was no real change in the marketing
17 order as far as out manned inspections, except giving
18 handlers who had a third-party audited food safety system
19 that included a quality control component, such as BRC or
20 GFS Level 3 -- I'm sorry, SQF Level 3 -- if they had SQF
21 Level 4 or BRC, that they would be allowed to self -- self-
22 certify the product that was being shipped out.

23 And one of the things that was pushed back that
24 really had me scratching my head was that that was not
25 allowed because foreign suppliers' wallets in the U.S.

1 market might not be able to get the same benefits that the
2 domestic processors had. And I'm probably going to be
3 bitter about that kind of a response for the next 50 years,
4 considering that, you know, I just -- I -- I found it
5 unbelievable that the USDA, it seemed to me, cared more
6 about protecting the economic viability of other countries
7 shipping walnuts into America, than our own handlers that
8 are struggling and growers that are -- you know, that are
9 losing their farms and I think that there's just a huge
10 amount of being out of touch with what is really needed.

11 So that was one of the discussions that I -- I
12 remember very well. I do remember another -- another one
13 unrelated to this on grades and standards, where we were
14 talking about pasteurization and log reduction and quality
15 levels and was told that USDA did not care about the safety
16 of food, they cared about the quality of food. Safety of
17 food was an FDA issue, to which my response was how can it
18 be -- how can it be considered good quality if it's not
19 safe. I -- I think that you have to have safety to have
20 quality. You know, those are some of the things that --
21 that stick in my mind, just because of the frustration I
22 had at -- at that level.

23 We've had a lot of -- a lot of productive
24 movement in -- in that committee. It's just sometimes you
25 find a -- an unexpected tree in the middle of your row that

1 you find you can't pull out and you just have to plow
2 around. That's not my type of farming, but apparently,
3 sometimes that's what you have to do when you deal with
4 government bureaucracy as it's just the easy way forward is
5 to plow around it. And that's some of the challenges that
6 we've had on grades and standards and discussing things
7 that we would have to do to modify how we would handle the
8 funding of our board with -- with the stipulations and
9 restrictions that have been applied to us.

10 I hope that doesn't ruffle feathers, but, you
11 know, that's -- that's my -- some of my most vivid memories
12 of the process.

13 Q So based on that, would you say that these
14 discussions were contentious?

15 A Yeah. I think in most -- I think most good
16 discussions, we've got to have a little bit of contention
17 in them. That's why our legal system was set up as an
18 adversarial system. The easiest way to the truth is when
19 you have people that don't agree because that's when you
20 get refined -- refined arguments and you really cut to the
21 core of the issue at hand. If it's a bunch of group think
22 and -- yes men or yes women or whatever the -- the
23 appropriate term is today, then you don't really get the --
24 the hard questions asked and you sometimes overlook
25 something that no one really was -- it was a rock no one

1 overturned. But when you have things that are hard to
2 agree on, you -- you end up looking in a lot of places and
3 try a lot of things to find the best solution possible.
4 And to that end, you know, this was not something that was
5 just taken lightly and thrown together and half-baked, you
6 know?

7 There was a -- and although I think there
8 might've been more elegant solutions. This is the best one
9 that we could get that also conformed to what was allowed
10 by grades and standards or what was allowed by USDA or what
11 wouldn't be allowed by USDA.

12 Q Could you speak to any type of outreach that was
13 conducted by these committees to get input from the
14 industry?

15 A Yeah. Well, we've had -- we've had a lot of
16 outreach -- you mean on the -- on the processor and grower
17 side of things or are you talking on the other side of
18 things, outreach into USDA to get some feedback from them
19 on what would and would not be allowed?

20 CHIEF JUDGE STROTHER: May I interject? We're
21 talking about outreach and -- and, you know, this -- this
22 whole line of questioning. Are -- are we -- and I guess
23 I'm only asking what the witness is testifying to. Are we
24 talking about specifically as to what's proposed and what's
25 being discussed in this particular proceeding or are we

1 speaking more generally? And I guess I'm asking the
2 witness what he's testifying to, but I'm asking the USDA
3 representative asking the question what he intends his
4 questions to go to.

5 THE WITNESS: Well, for me, I'm not really trying
6 to testify to anything other than to answer the questions,
7 as -- as -- as best I can and when asked to, you know, try
8 and provide examples, when asked for examples.

9 CHIEF JUDGE STROTHER: Well, no, I'm asking you
10 when you testify, you're testifying specifically to these
11 proposed amendments to the marketing order, or were you
12 testifying more generally as to other things that may have
13 come up?

14 THE WITNESS: Most of them would be to -- to this
15 in general, but I've had some other issues where, you know,
16 things have come up prior to this. For example, marketing
17 order revision, you know, when he asked, you know, if the
18 marketing order revision and grades and standards are
19 really kind of the same thing and they weren't, but I
20 couldn't -- I couldn't bring up something for a marketing
21 order revision committee off the top of my head as it
22 relates to this, how it's different from grades and
23 standards when I had one that just popped into my head from
24 a prior discussion that was not related to this change.

25 CHIEF JUDGE STROTHER: Okay. That's fair. Mr.

1 Quinones, is that what you're asking about, trying to -- I
2 meant the last few questions, not the -- not the earlier
3 ones when you asked about outreach and all of that, are --
4 were you intending to ask specifically about the amendatory
5 -- the amendments or -- or something more general?

6 MR. QUINONES: No. Yes, Your Honor, it was -- it
7 was specifically to the amendments that we're speaking of
8 today.

9 CHIEF JUDGE STROTHER: Very well. Please
10 proceed.

11 THE WITNESS: So when we have marketing order
12 revision or sorry, when we have our grades and standards
13 committee and marketing order revision committee, those are
14 open to the members of the industry to attend. And so as
15 these things have come up, we've seen greater attendance in
16 those from people not just on the -- on the committee,
17 especially in the grades and standards committee, we've had
18 a huge influx of people putting in -- putting in their two
19 cents. And either attending in person or calling in for --
20 for -- to listen to the proceedings and the discussions to
21 -- to add their input.

22 It's been probably better attended and -- and
23 engaged as far as growers and processors in our industry
24 that I've seen it in the eight years prior, these last two
25 years have been much, much more -- more grower -- grower

1 and handler participation in grades and standards than --
2 than I've seen in quite some time. And this has been the
3 driving -- driving reason for it.

4 MR. QUINONES: Okay. Thank you for that, Mr.
5 Poindexter. Sorry if that caused any confusion.

6 THE WITNESS: Oh, no problem.

7 BY MR. QUINONES:

8 Q All right. Looking over at your exhibit -- I
9 guess this would be No. 10, on Slide No. 8, you speak of
10 handlers and processors. Are those two different entities
11 within your industry?

12 A Not exactly. You know, it's -- they're kind of
13 used interchangeably. If there's a difference, I don't
14 know what the technical definition of the difference would
15 be. But for the most part, the handlers are the
16 processors. Two different terms for the same -- same
17 thing, canine and dog, right? Yeah.

18 Q Okay.

19 A Like farmers and growers, right?

20 Q Yes, sir. Okay. On Slide 6, could you explain
21 how the board spent -- in your slide, it says 3 percent of
22 the budgeted funds are for grades and standards. Could you
23 -- could you explain that a little bit further?

24 A So we have research projects that we do in grades
25 and standards. There is a -- you know, part of our meeting

1 is discussed -- is to discuss ongoing and future research
2 projects that we do. Some of them have been on shelf life.
3 Some of them have been on, you know, using modified
4 atmosphere packaging, modified atmosphere storage at the
5 processor level, pasteurization effectiveness, you know,
6 different ways to test for -- for freshness if, you know,
7 as we get more and more advanced testing and more and more
8 scientific capability, you know, we -- we need to look and
9 see are the tools that we use to test the best that
10 technology has to offer.

11 You know, for example, should we be looking at
12 peroxide value and free fatty acid or should we be
13 analyzing other things that would be a better indicator of
14 freshness in walnuts? And if so, how -- how effective
15 would that be? All of these -- all of these types of
16 questions, you know, that's -- that's going to take some --
17 some R&D and it's going to have to have a little bit of a
18 budget, try to be fairly frugal with it, but those are --
19 those are some of the things that we spend money on,
20 because it's not just about marketing a product but making
21 sure you have a product that is ideal to market.

22 And that's where the -- the grades and standards
23 fall -- falls in and where we will be looking at ways that
24 we can improve the quality of our product.

25 Q Thank you. On Slide 9, you refer to bearing and

1 non-bearing acres. Can you explain the difference between
2 the two?

3 A Yeah. So when I plant a walnut tree, it's not
4 going to -- it's not going to produce a crop for the next
5 four years. For year four, the -- the amount of volume it
6 produces is so negligible that it doesn't really move the
7 needle much. And so if you just count the acreage as
8 including all of those acres that are in the ground that
9 aren't producing anything, you're not really getting the
10 real picture of -- of what you have.

11 And so what you have is you have a -- a certain
12 number of acres of trees that are so young that they are
13 not producing a viable crop and then you have trees that
14 are fully in production. You know, you could look at it
15 like if you were looking at the workforce and, you know,
16 you're not going to include 14-year-olds who help in their
17 parent's kitchen, you know, two hours a week after school
18 in the family restaurant. That's not part of the workforce
19 that you would really consider a full-time worker.

20 And so we have the same thing in trees. You
21 know, which trees are in full production and which trees
22 are not really producing yet. And what you can do when you
23 look at the non-bearing acreage, you can see how much more
24 is going to be coming into the market in the -- in the
25 following years because these trees, we can't really

1 increase or decrease acreage on a whim, they're permanent
2 crops. And so we need to know what's coming -- coming into
3 production in future years so that we can plan on that and
4 know what we're going to have to market the following year.
5 And so we need to know both bearing acreage and the non-
6 bearing acreage to be able to make those kind of
7 assessments.

8 Q Okay. If we can go to Slide 12, Slide 12 shows
9 an increase in world production. Would you say that
10 increase in world production is -- is driving the need for
11 more marketing of U.S. produced walnuts?

12 A I would say that the -- the U.S. increase in
13 production is driving the need for marketing of the U.S.
14 walnuts. I think that the increase in production from
15 China is causing some additional issues in us losing that
16 market for California walnuts and having to find another
17 market for it elsewhere, while, at the same time, having to
18 compete against them in -- in the world market, where they
19 used to be a net importer and now are a net exporter.

20 Q Okay. If we could move to Slide 21, please. And
21 here, it says -- my question would be do handlers market
22 walnuts from the previous crop year?

23 A Yes, we do. We certainly can't afford to throw
24 them away, but a lot of times, what happens is the majority
25 of what is marketed or is shipped the following year was

1 already sold the year prior. So, for example, the selling
2 season at -- at 12 months, when you get into the following
3 crop, you're starting to sell the next crop over. But you
4 still have some of the prior crop carried in. Often times,
5 it is in the varieties or sizes that are not available at
6 the beginning of the season. You have to have a continuity
7 of supply and so, for example, if a -- if a customer or
8 yours says, you know what, I only take Chandler variety
9 walnuts, okay, well, if new crop starts in September,
10 Chandlers aren't harvested until October.

11 So what are you going to ship him in September?
12 If he only takes Chandlers, you're going to have to
13 carryover Chandler walnuts until September of that year.
14 They're only 11 months old, not 12, but you're going to
15 have that considered carryover crop into the following
16 season. And that is sometimes what we have to do. We have
17 to carry over some varieties into the following season,
18 just because the new varieties or the new crop of that
19 variety isn't available September 1 or even September 30th.

20 Also, sometimes the piece sizes, really small
21 sizes take a long time to produce and take -- they're more
22 labor-intensive to sort. And so those also are not readily
23 available at the beginning of the season. And so often
24 times, some of that is what is also carried over into the
25 new crop as we have customers that need smaller sized

1 walnut pieces. You know, we may need to have those be
2 shipped from the prior crop year in September and don't
3 really start getting into those until middle of October.
4 Darker kernels that are chopped up into institutional
5 baking -- you know, institutional baker's grade product for
6 chocolate and row bean or inclusion into brownies or other
7 things where the visual appearance of the nut is not -- is
8 not as paramount as the nutritional value.

9 Often times, those are harvested or come from
10 walnuts that are harvested a little bit later in the season
11 or also removed by electronic sorting from walnuts as it's
12 a -- not going to fit in the number -- the top two grades,
13 your combo grade. So those are kind of a byproduct and
14 those byproduct products take longer to produce. To get
15 those produced in the kind of volumes that some of these
16 customers will take, it takes quite a while. And so those
17 also are often carried over so that we have a continuity of
18 supply into the following season. Our industry has never
19 been sold out, as far as I've been in the industry and
20 probably not for the 80 years prior to that. The -- there
21 were years where we would see the carry out get below 7
22 percent of the crop and we would see prices start to spike
23 because that's not enough inventory to maintain continuity
24 of supply.

25 And so yes, we are selling the prior year's

1 product at the beginning of the season for continuity of
2 supply and sometimes you may have an excess of supply that
3 adds to that challenge.

4 Q And what -- what happens to walnuts that remain
5 in storage longer than normal?

6 A Well, it depends on how well they're stored. So
7 what I have found is that if you store walnuts at cold
8 storage, as soon as you bring them in from the orchard and
9 keep them in cold storage, they'll last as long as 24
10 months. You know, the -- the thing that you run into is
11 people have this idea that shelf life is just a fixed
12 thing, you know? Like if they put that date on the side of
13 your milk that says, you know, drink by, you know,
14 September 24th, September 25th, it's spoiled. No, it
15 isn't. It's probably good for five, six days after that or
16 maybe not.

17 It's not just a consistent boil it down to one
18 number. You know, shelf life is not how long the walnuts
19 last from when you put it on the box. Yet, we run into so
20 many customers that think, oh, that's when it was put in
21 the package, that is when the shelf life starts. I'm like
22 that is not when the shelf life starts, but they want an
23 easy to understand system that says from this point
24 forward, how much time do I have. When the reality is the
25 more accurate way is how long that walnut is going to last,

1 that clock is going to -- life is going to start ticking
2 backwards from when it comes off the tree. And it's going
3 to tick down a little bit every day. And that click will
4 tick faster if it's stored improperly: high-humidity,
5 direct sunlight, you know, having a lot of moisture or high
6 heat. And it's going to tick slower if we have ideal
7 storage conditions: low humidity, maybe an oxygen-free
8 environment, you know, nitrogen flush packaging, kept dark,
9 kept cool, how cold do you keep it, those things all affect
10 the shelf life.

11 MR. QUINONES: All right. Thank you. I have no
12 further questions for Mr. Poindexter.

13 CHIEF JUDGE STROTHER: Okay. I guess according
14 to our procedures, next up is anyone from our Zoom
15 connected audience, anyone participating in this proceeding
16 via Zoom have any questions for Mr. Poindexter?

17 Hearing and -- and seeing no -- no one interested
18 in -- in that, is there anyone participating by telephone
19 that wishes to ask Mr. Poindexter questions?

20 Seeing and hearing none, California Walnuts
21 Board, your -- your witness, so you have the opportunity
22 for redirect if you -- if you've got any questions.

23 MS. CHILUKURI: Your Honor, this is Rupa
24 Chilukuri from USDA. I was actually hoping to ask a few
25 questions after Mr. Quinones, but I didn't interject fast

1 enough.

2 CHIEF JUDGE STROTHER: Oh, okay. No, I'm sorry.
3 Actually, I mean that's -- that's fine with me. Is -- is
4 that going to be typical that there'll be more than one
5 questioner for USDA?

6 MS. CHILUKURI: Yes, Your Honor. So I'll -- I'll
7 generally defer to AMS to proceed first and then I may ask
8 questions at the end.

9 CHIEF JUDGE STROTHER: Very good. And good to
10 know. We'll -- we'll keep that in mind and we'll go back
11 down the other -- the other things, too. Thank you for
12 speaking up. Your witness.

13 BY MS. CHILUKURI:

14 Q Thank you. So Mr. Poindexter, I just had a
15 couple -- a couple of questions based off of your slide and
16 I don't have the exact page number, but so you referred to
17 -- on the industry structure side, you talked about
18 producers, processors, handlers and then ultimately, the
19 product going to the customer and you mentioned value-added
20 steps, can you -- that the processors or handlers engage
21 in, can you talk about what those value-added steps are or
22 what that means?

23 A Yeah, absolutely. So just to put it, you know,
24 really plainly, when we would ship product over to Europe
25 40 years ago, it was mostly in-shell walnuts and that's the

1 way people would get them. They'd go to the store and
2 they'd buy them. They'd take them home. They'd crack
3 them, throw the shells in the fireplace and eat the
4 walnuts. And then it turns out that the next generation of
5 -- of walnut eaters over in Europe, for the most part, did
6 not want to crack walnuts like their grandparents did.
7 They wanted us to crack them for them. So one of the
8 value-adds that we do is shell the walnuts and now they can
9 get them in a bag with a lot of that work already done for
10 them. Then you'd run into other people who'd say, you know
11 what, that's really great, but we would also like them to
12 be all of a uniform size because I'm going to be making
13 cookies and I don't want to sit there and chop them up
14 myself, I'd like them already sized appropriately to put
15 into chocolate chip cookies or whatever else they're going
16 to make.

17 That's some of the first steps of -- of value-add
18 that we're going to be doing, as opposed to just sizing the
19 -- the walnuts in the shell and sticking them in a bag.
20 Additional value-added you can do would be putting in
21 packaging, so, you know, when we go into food service, you
22 know, they -- they would take them in 25-pound boxes, but
23 some food service places would prefer 5-pound boxes or
24 maybe 3-pound bags with a tamper-evident zip lock sealable
25 top so that they can scoop out however many walnuts they

1 need for their recipe and then put the -- close the zip
2 back up and stick it back in the cold box, you know, those
3 would be some of the -- the value-added that we would do.

4 Other things would be, you know, extremely low
5 foreign material counts, you know, really low shell counts
6 for high-spec users, often times for places like Japan,
7 where they are very, very particular on the quality of
8 product that they're -- that they're using, whether it be
9 walnuts or other items. They're very, very well-known for
10 having the -- some of the highest standards in the -- in
11 the world for what they want on their -- on their food
12 ingredients. And so we would have, you know, ultra low
13 shell count specs for them as -- or what we call J-specs or
14 Japanese specification. Then -- I mean those are probably
15 your -- your primary value-add things that would be done.
16 And then also, there are some other things where we would
17 add or turn them into another ingredient.

18 You know, there are a couple of walnut
19 processors, myself and a couple of others that will make
20 walnut butters and so if somebody wants a -- a walnut
21 butter or paste, that is an option, or we do a flavored
22 coating and put them into the snack channels so that, you
23 know, now is, you know, a walnut with an initial flavoring
24 or coating on it, those would be some of the value-add that
25 we would do.

1 Q Great. Thank you. So turning to another slide,
2 this is sort of near the end, this is the time line slide
3 that you talked about. And you talked about the shipping
4 season has been -- has been problematic. I don't know if
5 that was of late or for a longstanding time. Can you talk
6 more about what you mean?

7 A Oh, yes, I can. (Laughter)

8 Q Not too much, but just a little bit.

9 A So, you know, well, when -- when we ship out our
10 -- our walnuts, so now, two-thirds of the walnuts are not
11 sold to the domestic market, they're sold in the export
12 markets. And with the exception of Canada and Mexico, that
13 means that you're going to be putting them on a
14 containership and shipping them overseas. That has been
15 very, very problematic over the last two years, as we've
16 been experiencing an increasing crunch at the -- at the
17 ports, particularly in the western U.S. for availability of
18 containers and space on ships to get sent out. I remember
19 when Covid was happening, we were just starting to see this
20 crop up during the -- the -- the first kind of recovery
21 from Covid.

22 And they would have containerships getting backed
23 up at the ports. This was, what, probably about 18 months
24 ago? And talking about how it was hard for these
25 containerships to get unloaded and that we were also having

1 problems getting containers -- the empty cargo containers
2 to ship out our product on. At the time, I was told that
3 there were 41 ships sitting out off the -- off the coast of
4 Long Beach waiting to get into the port, but there were no
5 available spots for them to get in and unload, just because
6 of how backlogged everything was. And the prior record was
7 something along the terms of like 11 or 12. Don't quote me
8 on that, but it was a -- it was a relatively low number.
9 And then, all of the sudden, it was 41 and it just seemed
10 mind-boggling.

11 And now I'm told that that number is close to 100
12 of containers that are -- or containerships that are just
13 waiting to get into the port of Long Beach, to the point
14 that one-fifth of all of the containerships on the surface
15 of the planet that were stuck waiting to get into a port
16 anywhere in the world were off the port -- of the coast of
17 Southern California, waiting to get into Long Beach. So
18 like we had a 20 percent market share of containerships
19 waiting just for L.A. That's how bad L.A. traffic is.
20 It's backed all the way up into the ocean and now the ships
21 can't even get in.

22 When they can't get in to unload, we can't get
23 our products shipped out. And so we've been having huge
24 problems getting containers to ship our product. And you
25 talk to most people -- not most, you talk to anyone that

1 exports walnuts, almonds, pistachios, you're going to find
2 the same thing. They have tons and tons of product sitting
3 at their warehouse waiting for a container to be able to
4 ship. Speaking personally, I think the lowest our
5 inventory has ever been waiting for containerships to ship
6 out has been 1.6 million pounds of finished goods sitting
7 here, waiting for someone to pick them up, already ready to
8 go, packed, labs, everything there and just don't have
9 anything to -- to put it into.

10 And that's been as high as, you know, 2.8 million
11 pounds maybe, I think, was peak, you know? And there are -
12 - I've talked to other processors that, that have had much,
13 much bigger challenges than that, some of the large almond
14 guys that have had just crazy numbers of -- of product,
15 just sitting there waiting to get shipped out. That's been
16 a real challenge.

17 It has also been a challenge -- it is very
18 frustrating when we find that a lot of the containers were
19 getting shipped back to Asia empty because the cargo ship
20 lines found that they could return it to China cheaper or -
21 - or return it to China empty and make more money by
22 flipping it really quickly to bring another load of iPhones
23 in than if we were to load it up full of walnuts or almonds
24 and ship it into the Middle East where it takes 60 or 45 to
25 60 days to get to the destination there and then however

1 much longer it takes to get back to China for them to load
2 up more product to ship to America to cover our Amazon
3 purchases.

4 Q Thank you. Thank you. Appreciate that. So now
5 turning to another slide in your -- in your presentation,
6 walnut shelf life -- in your -- as you were describing the
7 slide and talking about it, you mentioned some of the
8 advancements in the processing and package technology as it
9 maybe just generally as it relates to cold storage, too,
10 that some are quite expensive, it's hard to sustain. So as
11 a consumer, without these grades and standards in place,
12 how can I be assured that I will receive a quality product?

13 A Well, okay. So here's -- here's some of the
14 things that speaking of me personally, not necessarily as a
15 -- as a member of the board, but speaking on -- on for me
16 personally and my company, what I have found is that the
17 largest segment of or the largest channel in the domestic
18 market to get walnuts to consumers is through the
19 supermarkets. And the supermarkets, over the past 15
20 years, have been drifting more and more away from branded
21 supplies and into their own private label. And as soon as
22 they move to private label, they want to own all of the
23 value of the brand that's being packed. And they treat
24 their suppliers as commodity suppliers. The difficulty you
25 run into when you're a commodity supplier is that you don't

1 get to recoup all of the costs of these extra expenses that
2 you incur.

3 So if you want to put in, you know, more cold
4 storage and other things that will preserve the quality of
5 your product, that's great. But when you go to sell it to
6 somebody who looks and says you know what, that's really
7 wonderful, but -- and you have to have this, but here's the
8 prices that we've been quoted, but those people who are
9 quoting those low prices may not have all of those things
10 put in -- in place. It, it -- suddenly, you find that a
11 lot of this talk about quality is lip service from some of
12 the retailers who really just want the lowest price
13 possible.

14 They want you to put in all of the quality stuff,
15 but they will buy it elsewhere if they can save a penny.
16 The consumers will pay for better quality, but often times,
17 they aren't directly able to make that decision. The store
18 will make that decision and the consumers are kind of --
19 that's somewhat hidden from the -- the consumers, so it is
20 frustrating. But at the end of the day, we all know that
21 the consumers, if they do not get a good quality product,
22 they're not going to buy again. And so we have to find a
23 way to get the best quality product we can and preserve the
24 flavor and the freshness and pass it on to the consumers in
25 a way that they can appreciate what they get and will

1 continue to buy and do the best job we can explaining why
2 that is necessary to what is essentially the biggest gate
3 keeper between us and the consumer, which is the -- the
4 retail supermarkets that largely want to buy product that
5 is not branded by the grower or processor that is doing all
6 of the -- the -- all of the growing and processing and
7 trying to preserve the quality in order to hit the price
8 point that they want to hit.

9 So, you know, as -- as far as what you need to do
10 as a consumer to make sure you get a good quality product,
11 if you don't, you need to raise hell with the supermarket
12 and say hey, I want fresher product. This doesn't taste
13 all that good. And hold them accountable if they -- if
14 they're cutting corners. We certainly aren't cutting
15 corners at our company. But one of the things that we do
16 find also that is -- that is very difficult is when we jump
17 through all of these hoops and put all of these extra steps
18 in to preserve the quality of our product, we have to then
19 also incur an additional second set of costs to do two full
20 quality control programs, one for our own in-house and then
21 an extra one for USDA because they have to have the -- the
22 inspections going on in parallel with ours and we have
23 double the cost with no additional value created by the
24 second step.

25 So what has been difficult is how do you justify

1 having all of your expenses that you paid for food safety
2 and quality and then paying them a second time just so that
3 you have a second -- second set of people looking at it,
4 rating to what is largely a lower standard than what you're
5 already doing and then trying to find a way to pass on that
6 product downstream without finding yourself not competitive
7 in that marketplace and how do you do that?

8 How do you incur those extra costs that, that one
9 of your competitors may not have -- may not have done?
10 Because if they don't have all of those food safety
11 standards and they're just doing the minimum possible,
12 okay, then they're still going to have that minimum quality
13 step that USDA is going to be enforcing, but they're not
14 going to go above and beyond and how can you justify going
15 above and beyond if you go above and beyond and still have
16 to pay for the base step on top of it? And that's one of
17 the -- the real challenges that we have and how are we
18 providing any good service to the end consumer if you make
19 it ineffective on a cost basis to go above and beyond
20 because you've saddled them with additional costs that are
21 unnecessary and duplicitous or -- or not duplicitous --
22 redundant.

23 How, how do you do it if you have all of those
24 redundant costs you force them to incur? You know, it --
25 it just, it makes it very difficult for us to raise the bar

1 when we still have all of that dead weight holding us back.
2 And I just don't find that to be in the best interest of
3 the consumer to require a second set of steps to do that
4 when we're already doing that, for the most part.

5 MS. CHILUKURI: Thank you, Mr. Poindexter. Those
6 are my questions at this time.

7 CHIEF JUDGE STROTHER: Okay, so --

8 MR. HINMAN: I have some questions as well, Your
9 Honor.

10 CHIEF JUDGE STROTHER: Mr. Hinman, all right.

11 MR. HINMAN: Yes.

12 CHIEF JUDGE STROTHER: The USDA continues with
13 its examination of Mr. Poindexter.

14 MR. HINMAN: Thank you, okay. Thank you, Your
15 Honor.

16 BY MR. HINMAN:

17 Q Mr. Poindexter, thank you very much for your
18 testimony here. I have a few general questions and then
19 I'm going to ask some questions specifically related to
20 slides.

21 A Okay.

22 Q You mentioned that you were a large handler, but
23 you're also a walnut grower, according to the SBA
24 standards. So are you -- are you a large walnut grower in
25 terms of the SBA standards, \$1 million or more per year?

1 A Oh, let's see here.

2 Q On, on average in a typical year?

3 A Well, I -- I would say that if -- if I look back
4 historical, no. I will say going forward, it will be. We
5 have a lot of acreage that is just coming into production
6 and I would think that if we had a -- a healthy return on
7 walnuts, we'd probably be above that, that mark two or
8 three years ago. I think we're finally going to pass that
9 mark maybe this year if you combine all of our farming
10 entities because we have several different farming entities
11 depending on family ownership and, and, you know, how, how
12 it's all structured.

13 But collectively, we've got about 500 acres in
14 the ground and will be producing about 3 million pounds of
15 walnuts when they're in full production here in another two
16 years, at which point, certainly we're going to be
17 considered a large farmer and I would think by combining
18 all of our farms up with, with how it's broken up through
19 our family, I think we're probably in, in that category
20 this year as well.

21 Q Thank you very much. And may I also ask, in
22 terms of the -- we ask these -- we ask these SBA-related
23 questions because that's part of -- it's part of the USDA
24 rule-making, but I wanted to ask you if, if -- is it your
25 understanding that the walnut industry, you have your own

1 sort of categories of sort of small, medium, large or
2 anything like that, if you could share, you know, as a --
3 as a handler, for example, do you think, you know, do you
4 have a sort of standard definition of what you consider to
5 be used in the industry, setting aside the SBA standards in
6 terms of sales or something, small, medium, large handler?
7 You may not be able to answer that, but I thought I would
8 just ask.

9 A Yeah. For handlers, I, I think that we've got --
10 essentially, we look at kind of the, the tiers of, of
11 handlers based on size and relative size compared to each
12 other. So you'd have a lot of large handlers, but not all
13 large handlers are equal. So we've got -- you know, we've
14 got the, the four biggest handlers in our industry are
15 going to be handling between 100 and 150 million pounds
16 apiece. I won't necessarily name names, but there's,
17 there's four of them that are of that size. Then the next
18 tier down, you're going to have handlers that are also
19 large handlers, but they're not maybe extra large, you
20 know, they're jumbo handlers, that are going to be, you
21 know, in that maybe 80 million to 50 million pound range.
22 And I would say there's probably six of them, give or take.

23 I'd have to kind of look at my notes. These
24 aren't really published. So we don't really have an
25 accurate idea of exactly how big each processor is, but for

1 the most part, you kind of know how your competitors are
2 doing and, and who is a big player and who is not. And
3 then below that, that group, you're going to have another
4 group of handlers that are less than 50 million pounds but
5 above about 20 million that are -- for the most part,
6 they're considered, you know, major handlers. We don't
7 really call them large handlers, but, you know, they're
8 major handlers. They are -- they're big enough that they
9 have the economies of scale that they're doing just about
10 everything.

11 They do in-shell, they do shell. They have their
12 own adequate cold storage. They have their own adequate
13 facilities, food safety programs. Generally speaking, when
14 you're at that scale, you're -- you know, you're kind of at
15 the -- at the big boys' table or, you know, the adult
16 table, you're not at the kiddie table. And then you've got
17 some of the smaller ones that, you know, maybe they don't
18 have a full line of -- of the value-added services. Maybe
19 they don't do retail packaging or maybe they don't have a
20 shelling line or maybe they -- you know, maybe they don't
21 do in-shell or, or something else that kind of separates
22 them from the rest of the ones that really are, are fully
23 vertically integrated or at least integrated all the way
24 until possibly not on the farm side of things but have all
25 of the, the major processes and components there in their

1 portfolio.

2 And so that's kind of where we would draw the
3 line. And so a lot of times when we separate out the, the
4 handlers, we look at the handlers that are -- that have all
5 of the major processes in-house and have adequate food
6 safety programs versus those that are just kind of hey, I -
7 - you know, what, what in fresh fruit, they would call a
8 shade tree packer, you know? We have something similar to
9 that in, in the walnuts where, you know, maybe they're a
10 grower just marketing their own product or the product for
11 them and, and one or two other handlers, mostly doing in-
12 shell.

13 Maybe they -- maybe they don't have their own
14 shelling operation, but try and find someone to custom
15 crack the walnut so they can market them. You know, that's
16 kind of the, the lower tier of, of packer. But it's not to
17 say that those guys don't have the same adequate food
18 safety and quality programs. You know, one of the -- I
19 mean one of the in-shell only guys that springs readily to
20 my mind, who I won't name, but absolutely has stellar, you
21 know, food safety standards. You know, so you can't grade
22 it just exclusively on that. Each handler really has to be
23 looked at individually and say, you know, what, what are
24 they. And you can't really just put them all in a cookie-
25 cutter set of boxes, although, for the most part, we -- we

1 try to do that, but we also know there are exceptions to
2 that.

3 And so some of the guys who aren't fully
4 integrated and have all of the -- all of the processes in
5 their portfolio may not necessarily be excluded from that,
6 that group of, of the major handlers that we know are the,
7 the -- really, the industry leaders.

8 Q Thank you. That's very helpful. I'll ask you
9 one more general question, then I will refer to the slides.
10 That general question is this is just a signal to other
11 witnesses coming up here, since I'm an economist, I want to
12 make sure there's strong economic content on the record.
13 I'm going to ask you sort of in general terms, collectively
14 of all of the proposed amendments here, I want to use the
15 words benefits and costs.

16 And if you could state in -- sort of in general
17 terms your views of if all of these proposed amendments
18 would come into effect, what -- can you say in general
19 terms what you think is the benefits to your business and
20 to the industry in general and compare that to costs, if
21 any, of putting the amendments in place. So benefits
22 versus costs and I'll ask this of you and every other
23 witness. Thanks.

24 A Well, I think that one of the first benefits that
25 we're going to get is not having to have our, our operating

1 budget adding in the additional cost of a second set of, of
2 food safety inspections that, that are redundant and at a
3 lower standard than what we're already packing to. Also,
4 there is a security aspect of that as well, where, you
5 know, one, one of the things that was really driving this,
6 this season, we saw that they weren't even going to be able
7 to adequately staff the number of inspectors that we needed
8 to have.

9 And so what do you do when you don't have the
10 adequate number of staffing to operate your business, you
11 know? And that is a, a potential liability that we avoid
12 that it's hard to quantify, but I know that it certainly
13 would be very disruptive to our business if we were having
14 to wait for a certification from people who can't get it
15 done because they don't have the manpower to, to take care
16 of that. I, I think there's a, a strong amount of, of
17 benefits there on that and, you know, if you want an actual
18 dollar figure, I think I'd have to sit down with my
19 calculator and, and calculate it out or look on what we've
20 paid in previous years. But it's -- it is absolutely not a
21 trivial amount of money, I will say that.

22 Q Yeah. Well, I don't need a dollar figure, I just
23 need what, what is helpful from every witness is the
24 comment that they do -- if, if you believe this, that the,
25 the benefits substantially outweigh the costs and I guess

1 would you agree with that statement?

2 A I, I, I do. I think the biggest concern that,
3 that I, and many others in the industry had, was just
4 lifting the, the inspection requirement altogether as
5 opposed to what was -- you know, what our intent originally
6 was was just to lift it on those people who prove -- who
7 have proven via third party audits that they're not
8 necessary, but unfortunately, that was, was not an option
9 that was considered something that would pass. And we
10 found that the, the benefits for what we're doing now are
11 so great that they even out risk or outweighed the, the
12 small amount of concern or risk of not having inbound
13 inspection on walnuts brought in from foreign countries.

14 You know, I, I think that there is -- you know,
15 there is the reality that as much as we have to worry about
16 that product entering the marketplace, no, no person wants
17 to end up trying to market substandard material because
18 it's just too risky. And so we just have to worry on --
19 rely on market forces to, to keep those people out instead
20 of inspection people trying to ship substandard product
21 into the marketplace. That would've been -- I mean that's
22 what we're having to resort to. I would've preferred a
23 different -- a different avenue, but we were told that was
24 not going to be viable. And so this is the best path
25 forward to us. And I still think that the, the benefits

1 massively outweigh the, the small amount of risk that we're
2 incurring on this.

3 Q Thank you. In one of the slides, you mentioned
4 the number of handlers, and this is going back to the SBA
5 distinction here, but 82 percent were small handlers and so
6 that shakes out to roughly -- out of 86, 82 percent, so
7 roughly 71 small and 15 large handlers. But you stated
8 that in terms of the 2018-19 season. Would you say that's
9 still largely true today, that 71-15 is a reasonable
10 representation of small versus large?

11 A That was the -- that was the '18 season, you
12 said?

13 Q Well, in Slide 17, you refer to --

14 A Yeah.

15 Q -- the 2018-19 season, I just wanted to say does
16 that -- does that remain an accurate representation?

17 A I, I, I would -- I would say that that probably
18 is. I mean that season average prices to growers were less
19 than 70 cents a pound, so when you're talking about sales,
20 you're talking about sales when prices were relatively low,
21 you know, at, at near historic lows. And so, you know,
22 we're looking at we're going to be probably close to that
23 again this year, but with a slightly bigger crop. So yeah,
24 I think that we're going to be at, at that kind of spread
25 between small and large handlers, maybe one or two popping

1 up above that, that line as the industry gets bigger. But
2 for the most part, yeah, I think -- I think that's the
3 case. I think we would've had more above that small
4 handler definition if we were looking at, you know, a year
5 like say 2014 when walnut prices back to the grower were
6 over \$1.50 a pound. And if you figure the, the field
7 prices or the farm gate value is, is that -- is that high
8 then the sales prices were also going to be high. And so
9 we'd be looking at a higher gross revenue, but the, the
10 number of pounds is still the same.

11 And so I -- that's where I think it, it kind of
12 skews the, the look of it a little bit when we're looking
13 at gross revenue instead of total number of pounds that you
14 move. If you're moving say 20 million pounds of walnuts
15 and the walnuts are being sold at \$2.50 a pound, you're
16 making, you know, 50 million pounds or \$50 million. But if
17 the price of walnuts doubles, you're moving the same amount
18 of volume, but suddenly, your business is twice as big. It
19 doesn't make sense to me. I mean I know that they, they
20 want to measure it in dollars, but when we're looking at
21 processors, you know, it's number of pounds you can move
22 and -- and that really determines what kind of
23 infrastructure you have as opposed to the actual value of
24 the -- the crop.

25 Q Thank you. Now I'm going to refer to some

1 specific slides. If you'll go to Slide 6 and this was a --
2 it goes back to the question when Mr. Quinones was asking
3 you questions about the grades and standards, you know,
4 expenditures, you mentioned about in one instance, some of
5 your comments about how, how the grades have been out-of-
6 date, you know? And one of the reasons for that is the
7 substantial improvement in technology. And I wasn't sure I
8 heard everything. You said grades and standards were set
9 long before. And I think you used the word laser sorter.
10 And then I could not hear the rest of the comment.

11 A And the -- the --

12 Q So could you talk -- talk about the type of
13 technology?

14 A Yeah. So we have laser sorters and optical
15 camera sorters. So your, your camera sorters, you know,
16 and that, that technology has, has increased substantially
17 in time -- over time as well. You know, so they'll use
18 cameras to look at the product or look at the walnuts.
19 They would determine color based on -- you know, based on
20 the amount of light reflected back and as the computer
21 technology has gotten better, they put these humongous
22 video processors on the back end of them, to the point
23 where now, they're not only looking at the color of the
24 walnut, they can look at the shape of the walnut. They can
25 look at it under a different spectrum of light.

1 So you have what you call a broad spectrum
2 analysis so instead of looking at it with a regular set of
3 light, you can look at it under both normal human visible
4 light, but you can go into the infrared and ultraviolet
5 spectrum, where things will fluoresce differently or
6 respond differently to, to light, where under certain
7 wavelengths, they don't show up and other wavelengths,
8 they, they stick out like a sore thumb.

9 You can think about like episodes of CSI, you
10 know, where they break out that really funky looking wand
11 with some weird light and, all of the sudden, things really
12 show up. We use that same kind of technology in walnuts to
13 say hey, what will really get these defects to show up
14 really easily so that we can spot them a lot better and
15 then remove them from the, the process. So you, you've got
16 walnuts going across a, a scanner that will look at these
17 and try and determine what's good and what's bad and kick
18 out what's bad by mechanical air ejection systems or, at
19 some point in the future, when it gets perfected, robotic
20 picking hands or, you know, who knows what else they'll
21 come up with in the future.

22 Lasers would use the same thing, but they would
23 look at product densities and other things like that. X-
24 ray machines, you know, we, we have a lot of process walnut
25 handlers using x-ray machines, you know, that weren't

1 really being -- I mean I don't think anyone was really x-
2 raying walnuts back in 1948, so, you know, a lot of the
3 things that we're doing reduce the foreign material and
4 increase the quality of walnuts substantially above what
5 was considered acceptable levels of defect and acceptable
6 levels of foreign material back in 1948 are trivial to, to
7 produce these days.

8 But those are still the standards. And in some
9 areas, we've made light years of, of progress on reducing,
10 like, for example, the amount of shells in walnuts. You
11 know, the, the number of shells that you would find in a
12 box of walnuts has plummeted over the last 20 years. But
13 the technology for removing mold, not quite so great
14 because the lasered electronic sorters have not risen to
15 the point that they're able to truly effectively replace
16 people on sorting those things out. So some grades and
17 standards haven't really changed much and others have
18 changed greatly based on improvements in technology. And
19 as those improvements in technology happen, the market will
20 start demanding that.

21 If you pack the minimum USDA specs, the only one
22 who will accept that load is the USDA, because I know that
23 none of my bakeries or supermarkets will accept loads that
24 meet minimum USDA specifications. That's just -- that's
25 just the nature of it and the industry as it rises and so

1 many people get so much better at, at that, that becomes
2 the de facto standard. And if you were sticking to the old
3 standards, it's not really -- it's not really viable in the
4 marketplace, unless you have someone that is stuck on those
5 standards and says well, this is -- this is what we buy and
6 we don't care if it's any better than that, you know, as
7 long as it meets this minimum, that's all we care about.

8 That, that's not an adequate reflection of almost
9 anybody in the marketplace today. And so we have seen huge
10 increases in quality over the years, both on sorting and
11 also on - in technology and also on the varieties. When
12 the -- when the standards were made, we didn't have the
13 Chandler variety or the Howard or Pillory or Ivanhoe or
14 Sawano (phonetic) or any other newer varieties coming out
15 of the UC Davis Cooperative Extension Breeding Program
16 where you were creating newer varieties that shell easily,
17 have -- you know, have shells that don't fracture into, you
18 know, as many pieces and are removed with mechanical
19 separation a lot better.

20 And so you have a lower amount of shells even
21 before you get into the laser service than you used to have
22 40 or 50 years ago.

23 Q Thank you. In, in referring to the technology, I
24 think you used a measure at some point of a, a unit or
25 something and I'm not sure I heard correctly, so like STF

1 Level 3, was that a measure of one of these standards or --

2 A SQF, safety quality -- SQF is part of the GFSI,
3 Global Food Safety Initiative. And so like your major --
4 your major branches of that, one is SQF, Safe Quality of
5 Food. Another is Primus GFS or I'm sorry, GFS, Global Food
6 Safety. And like, for example, for our, our company, when
7 we first started doing a lot of the food safety things
8 after the PCA outbreak in -- what was that 2009, you know,
9 one of the first things we did was we went in and got AIB.
10 That was -- or actually, we were doing that before, before
11 the PCA, but yeah, we found that that brand did not have
12 much clout anymore after, you know, it came to light that
13 AIB was certifying the PCA brands -- the PCA facilities as
14 well.

15 And so the industry kind of had a bunch of people
16 get together and say we need to have a better standard of,
17 of food safety of what needs to be done. And so they came
18 out with GFSI. BRC was already around prior to that, to my
19 understanding. And that kind of just got under that
20 umbrella as well. But that became its own little branch
21 of, of that, think about it almost like a franchise or, or
22 brand of, you know, so you have banking and you have Bank
23 of the West and, and Wells Fargo and all of those other
24 things and which one are you? So we were Primus GFS and
25 then we went to -- we were looking at going in SQF, which I

1 think was a, a step up for us. And we just went straight
2 into BRC, which, in my opinion, is, is the -- is the gold
3 standard for food safety in our industry.

4 But what you have is you have certain levels. So
5 you have like an SQF Level 1 and then there was an SQF
6 Level 2. Now, I don't even think you can get SQF 1 because
7 of FISMA requires everyone to be at that minimum level, but
8 again, minimum level is minimum level. And if that is your
9 spec, then what's the reward for being higher than that,
10 you know? So SQF2 is about food safety, but it has nothing
11 to do with food quality. And quality and safety are two
12 different things. And think you -- I think you have to
13 have a both, but the, the SQF 2 had nothing to do with food
14 quality. It only had to do with food safety. And USDA,
15 it's all about quality and not really so much about safety.

16 And so it made sense that if you were SQF 2,
17 yeah, maybe you want to have a quality component and that
18 would be something the USDA would do. But if you were SQF
19 Level 3, your food safety program also adds an additional
20 layer of food quality. And the same thing with BRC, BRC
21 has a food quality program in there. And so if you already
22 have a food quality program in your system that was
23 designed in the last 10 to 15 years, why would you then say
24 oh, and we also want to have this old food quality system
25 from 1948 and let's make you pay for that as well. And it

1 just -- it just didn't really seem like a -- like a good
2 thing for us to have that -- you know, that extra bit of
3 cost added to every member of the industry when a lot of
4 them already are above that level.

5 I know that there are, I think, 13 walnut
6 handlers that are BRC certified. I don't know how many are
7 SQF certified, but, you know, BRC, there's 13 of them, 7 of
8 them that are AA rated, which is the highest rating they
9 have. And so, you know, those are the ones that are
10 already at the top end of the spectrum. Why are they
11 having to also carry around a 1948 food safety program or,
12 I'm sorry, food quality program on top of what they're
13 already doing?

14 Q Okay. And, and actually, in the same discussion,
15 you mentioned -- I believe the phrase was indicators of
16 freshness and you named some chemicals. Is there some
17 insight there about the --

18 A So freshness, that would be FFA, free fatty acid
19 and peroxide value.

20 Q Okay.

21 A So when, when product breaks down, you'll have
22 the free fatty acids will start to break down. You'll also
23 have peroxide values will increase and those are things
24 that historically have been used to test for freshness.
25 And, you know, that's the difference between I sent this to

1 a lab and here are the numbers that came back versus your
2 wife just handing the jug to you and saying smell this,
3 does this smell funny to you, you know? And while that
4 smell this, does this smell funny to you or taste this,
5 does this taste okay, that actually really works, but most
6 people don't want to have a, a subjective freshness test.
7 They want something more objective and that is where
8 freshness testing comes in. And the industry, for a long
9 time, has used peroxide value and free fatty acid. But --
10 and I don't know why they never tested for hexinal.

11 Maybe they didn't have the technology to reliably
12 test for that or didn't have quite the understanding, but
13 when, when this breaks down and you start getting peroxide
14 values, the peroxide will then break down into hexinal and,
15 and I may be off on this a little bit because I'm, I'm not
16 a chemist, you know, but I did take chemistry classes in
17 college. So the peroxide value -- the peroxide will break
18 -- or you'll get the peroxides because of the food -- of
19 the freshness breaking down and the peroxide values start
20 to increase. Well, then the peroxide breaks down and
21 creates hexinal, which is even worse, but that only goes
22 up. The peroxide value does not stay constant. It can go
23 up and then it can go do. It can go up and go down. But
24 when it's going down, hexinal is going up. And so maybe
25 there's a better thing to look at than just peroxide value

1 because I, I know that there are ways to play around and
2 get the peroxide values to change temporarily.

3 And hexinal may be a better thing for us to study
4 for freshness. But that's going to take some testing and
5 some historical data to see how well it correlates. And
6 it's not something you can just switch to overnight. And
7 it takes some, some research. And research and all of that
8 studies, those cost money. And most people are not going
9 to do that on their own. That's where the grades and
10 standards committee and some of these projects that we have
11 matter because essentially, that's where you have something
12 that's a public good. Once that's being used in the
13 industry, then it becomes a standard and you can't say hey,
14 this is my own proprietary information very easily.

15 Those, those things tend to get out into the
16 marketplace and be used by the entire industry. And when
17 you have something that's being used by the entire industry
18 and you can't exclude someone from it, you know, there,
19 there you go into your, your public good and tragedy of the
20 commons and that's where you need something like the Walnut
21 Board to step in and say we're going to pay for this so
22 that it benefits everybody.

23 Q Thank you for increasing food technology
24 education quite a bit. I appreciate that. I want to move
25 on to Slide 11. And I just want to make sure I understand

1 it, so I think you said they come into production within
2 five to seven years; is that correct?

3 A Yeah, five, five years, they're considered in
4 production. It used to be longer than that. And some of
5 the older varieties, it was seven.

6 Q Okay.

7 A And then the newer varieties, it's five. But at
8 five years, they're not in full production. They're --
9 they just -- you know, they, they continue to ramp up until
10 they -- they're probably, you know, nine years old or so,
11 but it's, you know, when are you in your peak and when are
12 you, you know, considered productive enough to really
13 count. And at five years is when they start counting them
14 as in production. They produce a little bit in year four.
15 they produce more at year five and even more at year six,
16 but at some point, you have to draw a line and say this is
17 where we're going to start counting them. And they do that
18 at year five.

19 Q So 2017 through 2022, so the first year of this,
20 they're, they're coming in now, this year, this season?

21 A Yeah.

22 Q Thank you.

23 A Yeah. So we'll have 10,000 acres of new
24 plantings coming in this year, less whatever is coming out.
25 But even if -- even if you had 10,000 acres coming out and

1 you have the same acreage, what's coming out is not going
2 to be as productive as what's coming in.

3 Q Each, each unit of land is more productive,
4 correct?

5 A Yeah. If you're going to pull something out,
6 you're going to pull out your least productive branches.

7 Q Okay. Slide 19, again, I want to make sure I
8 understood this. You -- I think you said -- you were
9 pointing out here that there was a, a slew of years there,
10 2012-13 with high nut returns and then a series of years
11 with low returns. And I think you said the next six years,
12 this is continuing to this day, right, this, this --

13 A Yeah.

14 Q -- of, of never, never -- there was no study
15 after 2018 because you said this tendency has, has
16 continued.

17 A Well, we have 2018, but 2016, I don't have data
18 there on cost, cost, but if you look at the gross return,
19 the gross return from 2016 at \$4,000 an acre, that's right
20 there between \$3,300 the year before and \$4,600 the year
21 after and the years prior and after are both losing money.
22 And it just seems like a straight line through that.
23 Pretty confident 2016 was a loss for, for, you know, for
24 the farmers as well, even though there's no data to prove
25 it, you know, we, we made \$700 an acre more gross return

1 the year, the year prior, they lost \$1,100 per acre. And,
2 you know, so what did they make this year? Well, we don't
3 know exactly what their cost is, but their cost, you can
4 obviously see the trend line going up. And that's below
5 the trend line for the years before and after, so it's a
6 safe assumption it was below the trend line for that year,
7 too.

8 Q And even in 2020-21, you think it's likely that
9 the negative net return is still, still happening?

10 A I would say it's -- you'd say it's likely that --

11 Q On average?

12 A I would say that it is not stronger, it is almost
13 guaranteed.

14 Q Thank you.

15 A The -- there are very few ranches that are
16 productive enough and low cost enough to be cost effective
17 in this marketing environment. And we will see most
18 ranches running substantially in the red these last two
19 years.

20 Q Thank you. Slide 22. Just make sure I
21 understood this. Generally, the hulling and drying has
22 occurred already; is that correct?

23 A Correct. Because the handlers will buy the
24 walnuts based on third party or, or sometimes third party,
25 sometimes in-house, but they'll be based on an inspection

1 of the quality of the -- of the walnuts. And for that
2 inspection, you need to have them hulled and dried already.
3 We don't want to buy walnuts while they still have water in
4 them. I don't like buying water at 60 cents a pound or a
5 \$1.00 a pound.

6 Q Right.

7 A It doesn't matter the price. I don't want to buy
8 water that's going to evaporate off of the walnuts. So we
9 wait until their hulled and dried and then we pull a sample
10 and we pay based on the quality of that sample. And that's
11 pretty much standardized in this industry that, you know,
12 paid based on sample and the quality of the sample and it
13 has to be hulled and dried first.

14 Q And again, some, some growers will do it
15 themselves, others will hire third parties, correct?

16 A Correct, yeah. They'll all go through a huller
17 and dryer. It's just a question of who owns the huller and
18 dryer.

19 Q Right. A -- a large -- perhaps a larger grower;
20 is that correct?

21 A Either larger or sometimes -- a lot of times,
22 the, the hulling is drying isn't, isn't a grower at all, he
23 just has a, a walnut dehydrating operation.

24 Q Okay.

25 A I mean there were -- there were many years when

1 we were running a walnut dehydrating operations and we had
2 no acres of our own.

3 Q And you -- earlier, the, the storage you referred
4 to storage and treatment there, pasteurization, is that
5 like steam -- is steam treatment an example of
6 pasteurization?

7 A That, that is one form. Used to be all of the
8 pasteurization was with propylene oxide.

9 Q Okay.

10 A I'm not a big proponent of that, but it's still
11 out there and it still works. But we can see that the
12 future of that technology is -- you know, its days are, are
13 numbered, at some point, just like methyl bromide, you
14 know? Very effective but good luck getting, getting your
15 hands on it. That's on its way out. The replacement has
16 been they tried radio frequency. They've tried some other
17 technologies. The most successful one that we've found has
18 been steam pasteurization. And even then, not all steam
19 pasteurization systems are equal and equivalent. And so,
20 you know, there, there are quite a few different machines
21 made by various different people, but, you know, the, the
22 better ones are, are, I think, quite good.

23 Q Sure. And I, I guess you, you mentioned a, a
24 measure, I guess of killing the toxins, I guess, is that
25 like a logarithmic skill? Four logs or less, you use that

1 phrase?

2 A Yeah. Well, the pathogens, not toxins. You
3 know, so --

4 Q Pathogens, pathogens.

5 A Right. Yeah, yeah. A toxin is going to be
6 something like if you have mold on your product, the molds
7 release toxins, like apha toxin or oper toxin (phonetic).
8 You cannot pasteurize that stuff away. What you can do is
9 you can get rid of pathogens, salmonella, e. coli, Listera,
10 you know, staph, other things of that nature. You can also
11 get rid of microbial content, yeast and, you know, antheral
12 bacteria, that sort of thing. And, yeah, four log
13 reduction would be if you had -- what they'll do is they'll
14 inoculate it and they'll put say 10 -- let's say they put
15 a million microbes on there and if you have a four-log
16 reduction, you move the decimal place four to the right.
17 And so if you started with a million, now you have 100.
18 Five log reduction, you'd have ten. Six log reduction,
19 you'd have one left.

20 You don't really have 100 percent kill step on
21 any of these things, it's how many logs of reduction you
22 get. And every, every time you get rid of 90 percent of
23 them, that's one log. So when someone says oh, it's killed
24 90 percent of them, that's a one log reduction. And in
25 food safety terms, a one log reduction is almost none. You

1 know, you really need to have a, a three-log minimum to
2 really get a, a really good effect on food safety. And,
3 and, and to be considered pasturized, it's four -- it's
4 five logs. Almonds are considered safe at four. I think
5 walnuts are safe at a four log reduction. Probably even
6 safe at a three, just because we don't have quite the, the
7 level of, of risk that some other goods and commodities
8 would have, but, you know, the industry is kind of locked
9 into this idea of five log reduction is what you need.

10 And we just don't see the shelf life extension
11 that you would have at lower log reduction, but that's,
12 that's another fight for another day.

13 Q Slide 23, you're making this third point about
14 advancement processing being quite expensive, but you also
15 mentioned sustainability of features or something to that
16 effect. Could you elaborate slightly on that, what you
17 meant by sustainability related to advancement in
18 processing?

19 A Yeah, I'd be happy to. You know, sustainability
20 is quite, quite a big buzz word in, in the marketplace and
21 you get asked a lot, you know, what we do to make sure our
22 farm is sustainable and, you know, the farms that supply us
23 are sustainable. You know, and I just have to look at
24 people and say, you know, when we're buying walnuts from
25 fourth generation farmers who have been farming the same

1 land for a hundred years and they're producing more with
2 fewer inputs than they've ever done before, I think that
3 what they've been doing is sustainable.

4 But instead, what we have is we have people
5 asking for, you know, what you're doing to be sustainable
6 and they don't even understand the industry at all. They
7 want to know that you're doing things the way they think
8 they should be done. The reality is California farmers are
9 using some of the most sustainable farming practices
10 around. The only things that are not sustainable are
11 things that are being done to our industry by people who
12 think they know what is good for our industry but really
13 don't have the slightest clue what are good for our
14 industry.

15 What is not sustainable is taking away our
16 surface water, restricting our ground water and draining
17 our aquifers. You know, if we want sustainability, we need
18 to maintain our aquifers. And one of the best things to do
19 is to recharge them, but instead, our government is not
20 recharging them and they're taking them away and
21 restricting our water. Other things they're doing, they're
22 asking us well, what are we doing to be sustainable. A lot
23 of these things we can do are sustainable on an idealistic
24 level, but if they don't pay, I guarantee you nothing that
25 is economically unviable is sustainable indefinitely. You

1 cannot lose money year after year after year and be said
2 oh, this is sustainable. It's not.

3 If you want it to be sustainable, it also has to
4 be economically viable. And that means that if you want
5 people to jump through all of these hoops, you have to pay
6 them to make it so that it is not going to drive them out
7 of business, jumping through the hoops you're asking them
8 to do. And unfortunately, a lot of the sustainability
9 questions completely gloss over financial and economic
10 viability as a component of sustainability. And just like
11 I had -- I had my -- I butted heads with somebody when I
12 said, you know what, you can't have food quality without
13 food safety because, you know, food that is not safe, I
14 don't care, it doesn't -- you don't get quality if it's not
15 safe. You know, you don't say is it Grade A or Grade B,
16 it's not safe, period. It has no quality.

17 You have no sustainability if you're not economic
18 and sustainable. And we need to make sure that we are
19 economically sustainable. Otherwise, all the
20 sustainability things are for nothing if you can't sustain
21 it economically and keeping it going as an -- as an ongoing
22 business venture.

23 MR. HINMAN: Thank you for the fairness of your
24 answers and no more questions, Your Honor.

25 MR. HATCH: Mr. Strother, we can't hear you.

1 CHIEF JUDGE STROTHER: I'm sorry, I'm on mute,
2 yes. Anyone from the -- the Zoom audience have any
3 questions? All right. Anyone from the telephone audience?
4 Okay. California Walnut Board, any redirect?

5 MS. DONOHO: No.

6 CHIEF JUDGE STROTHER: Very well, okay. With
7 that, we can conclude the examination of this witness. Mr.
8 Poindexter had two exhibits, Exhibit 9 and Exhibit 10. Any
9 objection to entering Exhibits 9 and Exhibit 10 into the
10 record of this proceeding? Hearing none, Exhibit 9 and 10
11 are made a part of this record.

12 (The documents previously
13 identified as Exhibits 9 and
14 10 were received in
15 evidence.)

16 CHIEF JUDGE STROTHER: I think we need -- I'd
17 like to take a 10-minute break if that's -- if that's
18 sufficient even. It's like 10:55 West Coast time. I think
19 10 minutes probably ought to be enough, but then I think in
20 an hour, we'll do a lunch break. I'm thinking half-an-
21 hour. Is half-an-hour going to be sufficient? I don't
22 know what -- okay. I want to keep it moving. And at that
23 time, I can give a heads-up here. I said that I would
24 offer -- I would remind people of the opportunity if anyone
25 out there wants to testify that they can still get in a

1 request to testify the various methods that I described
2 earlier, which I think are all within the procedural rules,
3 at least you can find out how to do that.

4 So with that, it's 10:55 West Coast time, 1:55
5 here. Let's reconvene at five after, unless anyone has
6 anything further before we go. All right. See you at five
7 after, 2:05 Eastern, 11:05 Western time. Thank you.

8 (Whereupon, at 10:55 a.m., a brief recess was
9 taken.)

10 CHIEF JUDGE STROTHER: Can you folks hear me?

11 MR. HATCH: Yes, I can.

12 CHIEF JUDGE STROTHER: Excellent. Okay. Let's
13 keep all of the microphones muted while we're on breaks,
14 just, just in case. And the next witness in order on the
15 witness list I have is Jack Mariani for the California
16 Walnut Board. Mr. Mariani, are you ready to testify?

17 MR. MARIANI: Yes, I am, sir.

18 CHIEF JUDGE STROTHER: Mariani, I'm sorry,
19 actually. Okay.

20 MR. MARIANI: That's okay.

21 CHIEF JUDGE STROTHER: Mr. Mariani, do you swear
22 or affirm that the testimony you're about to give at this
23 hearing shall be the truth and nothing but the truth under
24 penalty of perjury?

25 MR. MARIANI: Yes, I do.

1 Whereupon,

2 JACK MARIANI

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

5 CHIEF JUDGE STROTHER: Okay. If there's anyone
6 here to conduct any direct by the California Walnut Board,
7 it's your turn to speak, otherwise, Mr. Mariani, you can go
8 ahead and give your, your testimony in the form of your
9 statement.

10 DIRECT TESTIMONY

11 MR. MARIANI: Thank you. My name is Jack
12 Mariani, J-A-C-K, M-A-R-I-A-N-I. My address is Post Office
13 Box 808, Winters, California 95694. I am a cofounder of
14 Mariani Nut Company, a growing and handling operation based
15 in Winters, California. Today, I'm testifying as a large
16 handler, but we also operate as a large grower as well. I
17 serve as vice chair person of the California Walnut Board
18 and sit on the executive and the market development
19 committees of the board. Today, I would like to provide a
20 general overview of the proposed amendments. Discussions
21 regarding the amendments began in the fall of 2020 as the
22 California Walnut Board sought to modernize the order to
23 allow inspections to meet current industry needs. The
24 original grades and standards enacted in 1948 were put
25 forth with varieties that no longer exist and/or are not

1 viable in today's domestic and international markets.

2 The industry has grown exponentially over the
3 past 73 plus years, further making the existing grade
4 standards obsolete. The quality control programs of
5 handlers across the industry have advanced significantly
6 over time. Customer specifications exceed USDA grade
7 standards. Handlers meet those customer expectations to
8 promote the quality for which California walnuts are known.
9 The board, its grades and standards committee and staff
10 worked with USDA for nearly a year to find a workable
11 solution. However, the complexity of the order left the
12 industry with few viable solutions. Thus, modernizing
13 quality authority by eliminating inspection requirements
14 and the order was pursued and currently a moratorium of
15 inspection enforcement is in place while this rule-making
16 is taking place.

17 The amendment would revise marketing order
18 Sections 984.50, which are the grade, quality and size
19 regulations, 984.51, inspection and certification of in-
20 shell and shelled walnuts and 984.52, processing of shelled
21 walnuts. The purpose of doing so is to remove the
22 regulations that no longer are adequate for today's market-
23 driven standards that exceed USDA grade standards.
24 Further, the requirement for inspection, as it was written,
25 tied certification for inspection to assessments. In order

1 to allow the industry to implement a new assessment
2 mechanism, the proposed language separates the assessments
3 from certification. However, the new proposed language
4 allows the industry to maintain the authority for quality
5 control regulation should the industry decide to implement
6 in the future.

7 All handlers will benefit from this change as
8 inspection is a \$6 million annual cost to the industry,
9 which is based on the Dried Fruit Associations of
10 California figures for the 2020 crop. The DFA is the
11 California Walnut Board's inspection agency of record.
12 Further, handlers will benefit from indirect cost savings
13 by eliminating the administrative burden, which results in
14 duplicative inspection, staffing and reporting.

15 It is anticipated that producers may benefit from
16 the decreased administrative burden and cost as overhead
17 cost reductions may be shared with growers. Handlers
18 continue to invest in efficient equipment and practices,
19 although levels of sophistication vary by handler and are
20 dependent on customer needs. Bulk cold storage,
21 fumigation, in-shell and shelled processing and inventory
22 management are accessible to all handlers. Individual
23 handlers' practices are dependent on the crop handled and
24 on customer needs.

25 The amendment requires conforming changes,

1 including a new mechanism for assessment collection,
2 984.69. A provision for the application of interest and
3 payment charges is being proposed as well. The application
4 of interest and late payment charges is a standard business
5 practice that would help the California Walnut Board to
6 encourage timely payment. The California Walnut Board
7 would like to add this language to further enhance handler
8 compliance with requirements of the order. Interest and
9 late payment charges would equitably apply to all handlers
10 in the industry and ensure that they are following the
11 rules that we as an industry, under the board, recommend to
12 the USDA.

13 The proposals further refine the order to
14 eliminate previously stated provisions regarding volume
15 control, 984.49. Volume control has not been used by the
16 industry in over 30 years. The industry has invested
17 heavily in building demand with the goal of selling and
18 moving the crop versus limiting the supply. Further, the
19 state provisions of the language no longer align to the
20 deleted quality regulation language, therefore, this cleans
21 up the order to reflect only those authorities and
22 provisions that are in effect.

23 If implemented, the proposal will better align
24 the order to industry practices and eliminate redundancies
25 in inspection while reducing cost and administrative burden

1 for handlers and the California Walnut Board and providing
2 cost savings to producers. Further, the industry,
3 producers, handlers and the California Walnut Board all
4 benefit from the collective equitable change that
5 modernizes the order to make it work harder for the
6 industry.

7 My colleagues will be testifying today and
8 providing additional detail as to the proposals and their
9 implementation. I support the amendment, as proposed, to
10 allow the marketing order to work for the industry in the
11 most efficient way, reflecting today's business
12 environment. And that ends my testimony.

13 CHIEF JUDGE STROTHER: Very well. As is our
14 procedure, this is the California Walnut Board's witness.
15 Does anyone from the California Walnuts Board have any
16 questions for their witness?

17 MS. DONOHO: We do not.

18 CHIEF JUDGE STROTHER: Okay. Next up for our
19 procedures is the United States Department of Agriculture
20 and I understand there may be more than one questioner, but
21 is there -- there anyone from USDA that has questions for
22 Mr. Mariani?

23 MS. PANKEY: Yes, Your Honor. This is Christy
24 Pankey and I will be questioning Mr. Mariani. May I speak?

25 CHIEF JUDGE STROTHER: Ms. Pankey, your witness.

1 CROSS-EXAMINATION

2 BY MS. PANKEY:

3 Q Thank you. Hello, Mr. Mariani. Thank you for
4 your testimony today. I will begin asking you questions
5 about your participation on the California Walnut Board and
6 Committees. Mr. Mariani, could you tell me, how long have
7 you served on the California Walnut Board?

8 A I don't know the exact year, but it's probably in
9 -- over 40 years.

10 Q Okay. Thank you. And your operation, the
11 Mariani Nut Company, how long have you been in business?

12 A This is our 50th year.

13 Q 50th year?

14 A Yes.

15 Q Okay. So would you say that you've seen
16 firsthand how the industry has changed over the years, both
17 as a large grower and a large handler?

18 A Very much so.

19 Q Thank you. In your testimony, you also mentioned
20 that you serve as the vice chairperson of the board. Could
21 you explain to me what that position is and what that role
22 entails?

23 A Really, it's -- I serve as, as a board member and
24 if our chairperson, Dr. Good, he was unavailable, then I
25 would conduct the meeting, but other than that, I'm just a

1 normal board member.

2 Q Okay. So to clarify, as vice chairperson, you
3 conduct the meeting if the chairperson is absent, that's
4 the only responsibilities you have as vice chair?

5 A Yes.

6 Q Okay. In your testimony, you also stated that
7 you serve on the executive and market development
8 committee. Could you tell me about those committees and
9 what their purposes are exactly and your role on them?

10 A The, the market development committee is -- meets
11 to discuss the, the ways that we try to budget the -- our,
12 our dollars most effectively for the domestic market
13 activities. And the executive committee is a -- is a group
14 that kind of oversees the approval of the budgets from the
15 various committees, making recommendations to the executive
16 committee who reviews those and then will eventually take
17 those recommendations to the full board.

18 Q Okay. So just to clarify, the market development
19 committee discusses the budget for the board and then
20 recommends that to the executive committee, which over --
21 which reviews that and oversees that and then they
22 ultimately recommend that to the entire board; is that
23 correct?

24 A Correct.

25 Q So in regards to the proposed amendments today,

1 could you tell me how the executive committee and the
2 market development committee participated in the drafting
3 of those proposed amendments?

4 A I, I would say from the executive committee's
5 approach, I mean the idea was to try to -- the biggest idea
6 was to try to eliminate excessive expenses that were
7 duplicative to the industry and as I stated in my
8 testimony, the DFAs' charges to the industry the previous
9 year was about \$6 million. And it was strictly a, a
10 repeat, you know, an unnecessary step to what the handler
11 was already, already doing. And from the executive
12 committee standpoint, trying to be as efficient as the
13 industry can and be responsive to growers who are
14 struggling, it's tried to eliminate any costs that were
15 unneeded and, and that was probably the, the most important
16 factor was getting rid of a double inspection.

17 Q Okay. Thank you. So as vice chairman, I'm sure
18 you're aware of the current composition of the board.
19 Could you tell me what that composition is and the number
20 of growers and handlers that currently serve on the board
21 and also their, their sizes, please?

22 A The -- I think in, in round numbers, I should
23 know this exactly. I could be corrected later, but it's
24 something that I think there's four handler representatives
25 to each from the two different growing districts of the

1 state and then additional handler representative, I think,
2 and it's some sort of independent way and then there's, I
3 believe, four grower representatives as well to each from
4 each district. And I, I could be -- stand to be corrected
5 on that exactly, but that's roughly the makeup.

6 Q And out of that composition, are those growers
7 and handlers representative of the industry as far as small
8 and large sizes?

9 A They, they -- I don't know exactly. They
10 probably are pretty much representative. There's no
11 restrictions for either growers or handlers and, and
12 putting their names up for election. And I, I, I don't
13 know exactly the sizes of each one, but I would assume
14 they're somewhat representative.

15 Q Could you tell me how the board ensures that it
16 is that the committee members nominating and serving are
17 representative of the industry?

18 A Well, the board publishes every, every two years.
19 When there's an election coming up, it advertises as widely
20 as possible the upcoming election and encourages growers
21 and handlers to put their names up for the possibility to
22 serve. And, and that's the main way it's, it's encouraged
23 is just by getting the word out through every possible way.

24 Q Could you provide me with some examples of those
25 ways?

1 A Uh-huh. Well, the, the Walnut Board has its, its
2 publications it puts out, you know, very frequently
3 electronically as well as, I think, through written,
4 written areas. It advertises through the various nut
5 grower magazines that are published and, and spread
6 throughout the growing districts and it also is present at
7 grower meetings and, and different areas of the state
8 during the year to make sure that everybody is as aware as
9 possible of upcoming elections and the possibilities to run
10 for positions.

11 Q Okay. Thank you. So I'm also curious about the
12 outreach that may be conducted in the development of the
13 proposed amendments. Do -- does the board or do committees
14 conduct any outreach to gather feedback from industry and
15 the development of the amendments being proposed today?

16 A Well, there, there was a lot of meetings that
17 took place. And a lot of discussions in, I think, as many
18 areas of the industry as possible. And I know probably
19 within each of the processors, handlers, I'm sure, like our
20 company, we discussed that internally and with a number of
21 growers, just trying to come to the logical conclusions
22 that what needed to be done to make the industry more, more
23 reflective of what's happening during this -- these time
24 periods and ways to cut costs to the industry, eventually
25 to the grower.

1 Q Okay. And so those meetings that were conducted
2 for the full board that remained public for the industry to
3 provide feedback, would you say that there was quite a bit
4 of discussion or feedback that might've been provided from
5 the industry in regards to the drafting of these proposed
6 amendments?

7 A I, I, I don't know what I would -- how I would
8 quantify it, but once it -- once the discussion started,
9 there was just nothing but supportive language and
10 supportive efforts from virtually all of the industry that
11 I was familiar with supporting the proposed changes and,
12 and urging us to get them on the table to the USDA as
13 quickly as we could.

14 Q So in regards to the -- in regards to the number
15 of members that serve on the board, it sounds -- there was
16 approximately 10 members. Would you say that most members
17 serve on at least two or more committees?

18 A I would think so. I would think so.

19 Q Okay. All right. Do you feel that the people
20 you represent, the California Walnut Industry, have a solid
21 understanding of the amendments being proposed today?

22 A Yeah, I think anybody who has taken the time to,
23 to, to read it or discuss it with somebody, yes, they have
24 a good understanding of our intent.

25 Q Are you aware of any specific efforts to educate

1 the industry outside of the meetings being conducted to
2 allow them to express their, their interest or input into
3 the proposed amendments?

4 A Outside of the California Walnut Board, I think
5 it would just be up to each, each handler or each grower's
6 interest to discuss it, which I know has happened, but that
7 would be it. Nothing that's official.

8 Q Okay. Thank you. So I will now begin asking you
9 questions about the proposed amendments themselves. In
10 your testimony, you stated, "Customer specifications exceed
11 USDA grade standards." Could you please explain what you
12 mean by that?

13 A Yeah. I, I think probably a real simple
14 explanation is if we were to ship the majority of our
15 customers what is allowed under the USDA guidelines, and,
16 and we -- and we shipped it to the maximum allowable
17 amount, specifically a foreign material or walnut shell, we
18 would get those loads returned, even though they passed
19 inspection. Most of the customers of our industry would
20 not accept that type of material and it would -- even
21 though it passed inspections, it -- we would -- we would
22 get it right back in our doorstep.

23 Q Okay. So in your operation, do you -- are there
24 no customers that you have that would -- that purchase
25 walnuts at USDA grade standards? Are all of the customers

1 that you sell walnuts to have higher contract
2 specifications in regards to the quality of walnuts?

3 A I mean I -- basically yes, I -- I -- you know, I
4 guess there's -- probably, there's some customers around
5 the world that are less demanding but I know for our
6 customer base, we're, we're heavily into the retail markets
7 and, and we just -- we would not be able to put that type
8 of material into a package and deliver it to a, a retailer
9 to go to a consumer? It, it would be unacceptable.

10 Q Okay. All right. So you've been in operation
11 for the -- you, you mentioned that you've been operating
12 for the last 50 years. Over the course of the last 50
13 years, was there a time when customer specifications did
14 not exceed USDA grade standards?

15 A I -- you know, way, way back, perhaps, you know,
16 it wasn't as, as critical but, you know, over time, it
17 became -- it became real obvious that, that we had to do a
18 better job as an industry and, you know, with, with
19 technology, it gave us the opportunity to do so and, and we
20 saw, you know -- we've seen over 50 years, I mean it's,
21 it's a different industry, completely.

22 Q Okay. In your testimony, you stated that,
23 "Handler equipment and practice vary and are dependent on
24 customer needs." Is the variation between customer needs
25 and product specifications for quality greater than USDA

1 standards -- greater than the standards that are currently
2 required in the marketing order?

3 A If I -- if I understand you, the customer's --
4 customers demands and expectations are greater than the
5 USDA standards.

6 Q And in general for all of industry, for all
7 handlers and industry customers in general?

8 A In general, yes.

9 Q Okay. In your opinion, is the industry able to
10 meet those higher expectations without mandatory
11 inspections as currently required under the marketing
12 order?

13 A Yes.

14 Q Okay. Can you explain some of the advancements
15 made in your operation that help to ensure that your
16 walnuts meet higher customer specifications?

17 A Well, our, ourselves, like much of the industry,
18 has taken advantage of the, the technology that's become
19 available to us in the past years, which made it much, much
20 easier to create a, a, a much higher quality product. And
21 like others, we invested heavily into cold storage and
22 handling procedures to try to maintain quality, optimal
23 quality from the time we receive it until the time we ship
24 it.

25 Q Okay. So only cold storage equipment has -- is

1 the technology has -- that has advanced over the years,
2 specifically cold storage?

3 A No, also the technology to be able to, to sort
4 the walnuts after they're shelled to, to separate, you
5 know, kernels from foreign material.

6 Q Okay. And did you explain what foreign material
7 is, is that like dirt and debris and rocks?

8 A Yes, all of those, including shell.

9 Q Okay. And would you say these advancements in
10 cold storage and the sorting, as you described, are
11 advancements in technology generally available throughout
12 the industry?

13 A Yes.

14 Q Okay. Thank you. So you mentioned the board
15 began having discussions since the fall of 2020. Would you
16 say during those discussions that several alternatives were
17 discussed or deliberated on in regards to the proposed
18 amendments?

19 A Yes. They, they were and to several of the
20 USDA's inspection programs that we found that none of those
21 were able to, to accomplish what we were trying to
22 accomplish.

23 Q Could you elaborate on the inspection programs
24 and how they were unable to fit within the means of the
25 industry?

1 A You know, I, I can't remember the names of the
2 USDA's programs, but one of them, I recall, was for self-
3 inspection but just the way the program worked wasn't
4 consistent with our industry and, you know, that was our,
5 our first -- our first hope was to find a way we could fit,
6 fit our needs under the USDA's existing programs, but after
7 very, very thorough studies, we were unable to.

8 Q From your experience, what would you say is the
9 cause for the advancements in industry and the changes in
10 customer expectations in walnut quality over the years?

11 A Consumer expectations.

12 Q What would you say is the cause for the change in
13 the consumer expectations?

14 A Well, if, if -- you know, if, if you look at say
15 if, if you're a candy manufacturer and we're shipping the,
16 the manufacturer USDA standards, which included a, a
17 certain number of shells in, in the carton and the candy
18 manufacturer starts to get complaints from their, their
19 consumers, it comes right back to us as, as a processor
20 and, you know, we've got to make changes and so that type
21 of consumer response made us a better industry going
22 forward.

23 Q Okay. So just to clarify from my understanding,
24 you're saying the public individual consumer expectations
25 of the quality has increased, therefore, increasing the

1 specifications of the customers that you sell your walnuts
2 to?

3 A Yes.

4 Q In your testimony, you spoke about inspection and
5 certification. Are these two different processes? Can you
6 explain to me how they work?

7 A Well, inspection historically was US -- I'm
8 sorry, the DFA coming in and inspecting our, our
9 production. Certification, it doesn't -- I don't know if
10 it follows inspection, we -- you know, I guess, we're,
11 we're certifying a lot by -- via the inspection, but I, I,
12 I think that they kind of go together.

13 Q Okay. So it's one process then, inspection,
14 followed by certification of the product?

15 A I would see it that way, yes.

16 Q Okay. If this proposal to eliminate inspections
17 -- the proposal to eliminate inspections is finalized, does
18 that eliminate all required California walnut inspections
19 in the industry?

20 A I guess the answer would be it eliminates all
21 mandated inspections. Handlers or their customers can
22 request an inspection to be done by DFA or USDA, but as far
23 as a mandated inspection, I would read that to be they
24 would be eliminated.

25 Q And why would a handler request an inspection

1 that isn't mandated by the marketing order?

2 A Perhaps because his customer is asking for such a
3 thing.

4 Q Could you elaborate on that a little further
5 about why would the customer be asking for a USDA
6 inspection?

7 A Yeah. Well, maybe if, if a -- if a buyer is
8 buying for the first time from a handler and he has no
9 history with that handler, perhaps he might ask for a --
10 for an inspection to be done on that lot prior to him
11 receiving it.

12 Q Would you say -- would you say a situation like
13 that is more associated with smaller handlers versus larger
14 handlers?

15 A No, I don't think so. I, I think it would -- it
16 would -- it would go either way.

17 Q Okay. Thank you. You mentioned there was a
18 moratorium on inspections. Could you explain what that is
19 and when it began?

20 A Uh-huh. Yeah, we -- when we made our request to
21 the USDA for, for these changes and we were in the -- in a
22 time period where we were beginning -- getting ready to
23 begin a harvest. Covid was an issue. Having DFA
24 inspectors present was an issue and so we made our appeal
25 to USDA and they were kind enough to work with our industry

1 to give us a short term solution to our problem to make it
2 possible to ship the crop on a timely basis, that, that
3 harvest and let us get to the point where we are right now
4 in trying to work through the language to make this a, a
5 change in the order that works for the industry.

6 Q Okay. Thank you. Could you explain what's --
7 the discussions that led to the moratorium by the board,
8 could you provide us with some insight into those
9 discussions, into the appeal process and, and what was
10 initially discussed and presented?

11 A Uh-huh. Well, like I said, we were -- we were
12 concerned about being able to, to harvest and, and process
13 and ship the crop. It's so critical in the fall, where we
14 have such a large amount of our crop shipped and sold
15 during the fourth quarter. We were in the situation where
16 we were faced with, with Covid, like I said, having issues
17 with, with general employment and the DFA of California was
18 having issues as well getting enough of a staff to come in
19 and inspect the, the crop as it was harvested and preparing
20 to get shipped. And that was the main discussions I think
21 we as an industry were, were focusing on in that time
22 period.

23 Q Okay. Clarify, when you say the product is being
24 shipped in the fourth quarter, can you tell me exactly when
25 that is?

1 A October, November, December.

2 Q And the product is being shipped by the grower?

3 A No, the grower has already delivered his
4 production to the handler and the handler is in the process
5 of getting it processed, packaged and shipped.

6 Q Okay. Thank you. In your opinion, has there
7 been any significant changes to the quality of walnuts
8 since the mandatory -- since the moratorium on, on
9 inspections was put into effect?

10 A No.

11 Q Thank you. In your opinion, do you think the
12 removal of mandatory inspections may adversely affect the
13 quality of walnuts in the future?

14 A No.

15 Q Could you explain why the industry would like to
16 maintain the authority to regulate quality control?

17 A You know, we -- I, I don't think anybody expects
18 it to change, but it's just something probably to have
19 there in the future, should something come in front of the
20 industry where we would find it advantageous to, to put
21 back into our -- into our ability to manage the crop. I
22 certainly don't anticipate it, but I guess the answer is so
23 why not just leave it there, just in case.

24 Q Okay. And if the board was to recommend quality
25 control regulations in the future, are you aware of the

1 process that would need to take place in order to do so?

2 A Not offhand, no.

3 Q You mentioned the estimated annual cost of
4 inspections is approximately \$6 million. That estimate is
5 based off of DFA's estimate for inspections conducted in
6 2020; is that correct?

7 A Yes, it is.

8 Q Has it always cost the industry approximately \$6
9 million to conduct inspections or has the cost of
10 inspections changed over the years?

11 A Well, the, the cost is somewhat dependent on the
12 size of the crop and how much is processed, naturally. And
13 over the years, the DFA's cost of inspections has gone up
14 with the cost of living, like everything else, so two --
15 twofold there.

16 Q Okay. You stated that the inspection and
17 certification is tied to assessments. Could you elaborate
18 on that?

19 A Well, in the -- in the past, the way the board
20 collected assessments from the handlers was based on the
21 volume of the DFA inspections. And so when the board
22 received the, the monthly totals of the DFA inspections by
23 handler, they would assess that handler for that amount of
24 processing.

25 Q Who provides that information to the board? Is

1 it the handlers themselves or DFA?

2 A The DFA directly to the board.

3 Q Okay. So when DFA conducts an inspection and
4 certifies that load, they then send that certificate to the
5 board; is that how that works?

6 A More or less, they'll send over a summary. I, I
7 believe it is at the end of each period that the board
8 would then use to assess the handler.

9 Q Okay. Okay. So if inspections are removed then
10 there is a new -- then, then there is a need to develop the
11 new mechanism, correct? Because without certification, the
12 board would be unable to assess handlers. Am I
13 understanding that correctly?

14 A Yes, you are.

15 Q Okay. You mentioned that one of your -- you
16 mentioned that some of your colleagues will be providing
17 additional details about the proposed mechanisms and, and
18 essentially the elimination of inspections and the new
19 assessment mechanism and the removal of volume control, so
20 I will conclude my questions about that there. I'd like to
21 ask you some basic questions about the addition of late
22 payment fees.

23 Could you explain to me why the board recommended
24 the addition of interest and late payment charges as a part
25 of this proposal?

1 A Well, I think it's pretty much consistent with
2 just business practices and I think it's, it's important
3 that all handlers be treated the same, regardless of their
4 size. Everybody should be -- should stand to the same --
5 the same sort of rules and if somebody is, is late in their
6 payment, it's not fair to the industry and they should be,
7 you know, just like another-- most businesses do, they --
8 like with your credit card, you have to pay penalties and
9 it just seems logical that our industry should be run
10 similarly and, and be fair to everybody.

11 So to clarify, you're saying the addition of late
12 payment fees would increase equatability amongst handlers
13 that are paying assessments; is that what you're saying?

14 A Yes.

15 Q Okay. Could you tell me how the board currently
16 manages late payments?

17 A I would leave that to the board staff.

18 Q Okay. In your testimony, you stated the board
19 decided to eliminate the authority to recommend volume
20 control. Could you explain why the board no longer views
21 volume control as an effective tool to regulate the
22 industry?

23 A You know, I, I think just the most people -- most
24 farmers and growers and handlers, we want to -- we want to
25 market our crops. We want to get it out there into

1 commerce and get it consumed. With volume control, that
2 holds that back and it's just -- it was something that
3 happened, it was available to the industry, utilized many
4 years ago and it was very unpopular and it seemed
5 counterproductive to what our industry is trying to
6 accomplish.

7 Q In your testimony, you mentioned that it is
8 industry's goal to sell more walnuts versus limiting
9 supply. Can you explain how the industry has invested in
10 building demand for walnuts over the years?

11 A Yeah. Well, we, we -- the California Walnut
12 Board has been doing a lot of work on, on marketing, which
13 you saw in some previous slides, that we spend a majority
14 of our money on domestic marketing activities. In addition
15 to that, the industry is invested in -- heavily into, into
16 health research. The California walnut industry has more
17 health research success stories over the last number of
18 years than virtually any other type of competing nut.

19 So between those two categories, the industry is
20 investing a lot of money in trying to -- trying to bring
21 more demand and sell more walnuts.

22 Q Okay. Thank you. Could you explain the process
23 to reinsert volume control back into the order if it is
24 ever needed in the future?

25 A No, I can't.

1 Q Okay. Thank you. Currently, the marketing order
2 authorizes quality regulations, research and promotion and
3 volume control. If the proposed amendments are
4 implemented, please explain what modernizing the order
5 would look like in your own words and how it aligns with
6 current industry needs. And if you need me to repeat the
7 question --

8 A Yeah. Well, I can give you a short answer. I,
9 I, I think just reading the main -- looking at the -- at
10 the proposals that we're, we're looking -- we're, we're
11 proposing, the big things are, are, are eliminating the,
12 the inspections, which is a huge savings to the industry
13 and the ability then to do a assessments that will give us
14 the capability of having the amount -- the revenues that we
15 feel necessary to continue to operate the, the marketing
16 board on behalf of the growers and the handlers in the best
17 possible way.

18 Q Okay. Thank you. And would you say that if
19 implemented, this new marketing order would be focused more
20 on, as you said before, the selling and moving of walnuts
21 through promotion and research?

22 A That's, that's our -- the largest amount of our
23 budgets definitely goes there.

24 MS. PANKEY: Thank you, Mr. Mariani.

25 Your Honor, I have no further questions.

1 CHIEF JUDGE STROTHER: Okay. Can everyone hear
2 me? Anyone else from the USDA?

3 MR. HINMAN: Don Hinman, USDA.

4 CHIEF JUDGE STROTHER: Your witness.

5 BY MR. HINMAN:

6 Q Yes, Mr. Mariani, thank you. There's a general
7 question I intended to ask Mr. Poindexter, just want to
8 get, you know, statements on the record about, you know,
9 the witness' views of benefits and costs. And so you can
10 say if you believe that the benefits of these proposals put
11 together substantially outweigh the costs, yes or no. And
12 then if you could provide some, some depth behind it, you
13 know, why, why you believe that the benefits so much
14 outweigh the costs. Thanks.

15 A Yeah. Very simply, yes, the benefits do outweigh
16 the costs and just the simplest one right up front is \$6
17 million saved from inspections.

18 Q So and you see no increased administrative burden
19 at all? Basically, it's a cost reduction. No, no cost
20 increase, no burden at all from this?

21 A No.

22 Q Thank you. And then referring to a statement
23 from your, your written testimony. You refer to bulk and
24 cold storage, both in-shell and shelled processing, with
25 all handlers. And can you just help me understand, cold

1 storage, as you mentioned before, it seems to be self-
2 explanatory. Can you distinguish between bulk storage and
3 cold storage?

4 A If I understand you correct, you, you said bulk,
5 bulk storage?

6 Q Yeah. One of your phrases at the top of your,
7 your second page of your written statement, you referred to
8 bulk and cold storage as distinct types of storage. That
9 was one way to interpret that. I was just trying to
10 understand the meaning of bulk standards versus cold
11 storage.

12 A Yeah, yeah. Well, bulk storage, when we look at
13 it is when we, we receive our crops from the growers during
14 the harvest season, they all come in in such a short amount
15 of time and it's difficult to store, you know, in, in small
16 quantities, so we have some larger building where we have
17 areas where we can put multiple loads into say a certain
18 area and, and store it until it's time to go to the
19 sheller.

20 Q Okay. Thank you. And then you had mentioned as
21 part of a list of, of, you know, processes or whatever
22 accessible to all growers, you mentioned fumigation. Now,
23 is that referring to fumigation like, to reduce pathogens?

24 A No, it's usually the, the fumigation on harvest
25 is usually just, just to make sure there's no live

1 infestation.

2 Q Okay. So this is actually often, you know, prior
3 to -- prior to delivery or, or, or early in, in the
4 receiving process?

5 A It's upon delivery.

6 Q Upon delivery. So one of the first thing you do
7 is fumigate, correct?

8 A Correct.

9 Q Okay. You also then use the phrase individual
10 handling practices are dependent on the crop handled and
11 customer needs. Could you provide an example using your
12 own firm of, you know, some handler practices and how you
13 would, you know, using, you know, your technology and other
14 things you may want to mention about the crop handler
15 customer needs? Are there examples of these?

16 A It's -- you know, there, there's little
17 differences like if, if certain customers who are your in-
18 shell customers in different countries, they may want a
19 certain size or a certain variety. And so when you receive
20 the nuts, you, you separate those for that particular type
21 of customer. And conversely, if, if you have a, a customer
22 who wants say just strictly shelled walnuts and a certain
23 variety, those go into a different area and you hold that
24 for processing for that type of customer.

25 MR. HINMAN: Okay. Thank you. No further

1 questions, Your Honor.

2 CHIEF JUDGE STROTHER: Okay. Anyone else from
3 the USDA have questions for this witness?

4 MS. CHILUKURI: Yes, Your Honor. This is Rupa
5 Chilukuri. I just had a few questions for Mr. Mariani.

6 CHIEF JUDGE STROTHER: Your witness, counsel.

7 BY MS. CHILUKURI:

8 Q Thank you. So Mr. Mariani, you've referred to
9 the existing grade standards and just so we're all
10 understanding what those are referring to, in 980. --
11 984.50 of the walnut regulations, refers to for in-shell,
12 in-shell walnuts, it refers to US No. 2 Grade and baby size
13 as defined in the then affected United States standards for
14 walnuts in the shell. Is this the minimum standard for
15 shelled -- in-shell walnuts that you were referring to?

16 A I believe so. For in-shell, yes. I think that's
17 true.

18 Q Okay. And then now looking at 984.5B, there's a
19 reference there to requirements of the US Commercial Grade,
20 as defined in the then affected United States standards for
21 shelled walnuts. It also goes on to talk about the minimum
22 size, things like that. Is -- are these two provisions,
23 984.50A and B, these are the two current existing standards
24 that you are trying to remove. Is that correct?

25 A I would say in general, yes, that sounds correct.

1 Q Okay. Thank you. So you've referred to
2 duplicative inspections and double inspections. Can you --
3 I think I'm trying to understand where the inspections take
4 place in the process. So if you could help me out on that,
5 where are the inspections duplicative?

6 A Yeah. We -- I think our, our facility is pretty
7 common for the industry, for the nuts, talking about
8 shelled walnuts, right? Now, if the nuts come out of the
9 sheller, they go over a couple different little processes
10 and get to sorting belts. And on those sorting belts, we
11 have inspectors who are monitoring every, every, you know,
12 two minutes, three minutes, sampling to see exactly what's,
13 what they're finding. And for example, if we're finding
14 something that's over the expectations of our customer, we
15 separate the product that had been passed over that certain
16 time period to go back and get rerun.

17 And so we're, we're -- basically, we're
18 guaranteeing that we're going to end up with a product that
19 meets the specification of our customer. So we're doing
20 all of that ourselves. Then at the end of the day, in past
21 years, we had the DFA come in and inspect that same
22 product, which is the, the double inspection.

23 Q Thank you. So that, that first inspection that
24 you were referring to, that's handler-driven, so each
25 operation would choose to or not choose to engage in that

1 operation? That's not mandated by anyone. Is that
2 correct?

3 A It's not mandated, other than what your, your
4 customer's expectations are.

5 Q And even if it isn't mandated, would you say that
6 it is common? I think you were talking about your own
7 operation, but is it common, would you say, across the
8 industry to engage in that first inspection?

9 A Yes, I think it is. I think it's -- I don't know
10 if it's completely 100 percent, but I'd say it's -- if not
11 100 percent, it's very, very close to it.

12 Q Okay. So now, obviously, there's a moratorium of
13 inspection as it relates to the DFA inspection in the
14 marketing order. Can you talk about what handlers are
15 doing now during that moratorium? Have they made any
16 changes to their practice as a result of the inspection no
17 longer -- the second inspection no longer taking place or
18 have they included new measures or are they just staying
19 the same? Any knowledge that you have on that?

20 A Just speaking for ourselves, we're, we're staying
21 the same. You know, we've got our, our, our processes are
22 in place and we were just continuing to do the same thing
23 we've done for a number of years, so I, I, I see no change
24 at all there.

25 Q Thank you. So if I'm understanding the link

1 between inspections and assessments correctly, so with the
2 proposal, if there are no mandatory inspections and no
3 certifications, you would now be assessed on all walnuts
4 handled, rather than those that just to pass inspection and
5 certification; is that right?

6 A Yes.

7 Q Okay, okay. And I'm going to ask that you take a
8 look at Exhibit 6. So if Mr. Hatch could pull up Exhibit
9 6, that would be great. Thank you. So Mr. Mariani, I
10 don't know if you were online when I discussed this
11 exhibit, but we're talking about 984.67, proposed
12 exemptions for assessments. So the right hand column, the
13 highlighted language had been inadvertently removed from
14 prior versions. I wanted to hear your, I guess, thoughts
15 as to what 984.67 should look like. So would you support
16 the language as it's set out in the right hand column?

17 A Those all seem reasonable.

18 Q Okay. So you would agree that some exemptions
19 should include walnuts that are sold at roadside stands,
20 based on numbers, green walnuts to non-competitive outlets,
21 those should all be in the marketing order; is that
22 correct?

23 A Yes, I agree.

24 MS. CHILUKURI: Okay. Thank you. Okay. Thank
25 you very much, Mr. Mariani. I have no further questions.

1 CHIEF JUDGE STROTHER: Okay. Is that everyone
2 for USDA now? All right. Anybody connected to this
3 hearing via Zoom have any questions for this witness?
4 Hearing none, seeing no raised hands, I don't think anyone
5 on Zoom's got any questions. How about anyone that's on
6 the telephone? Anyone have any questions for this witness?
7 Hearing none --

8 MS. SANTANA: Chief Judge, this is Marisa
9 Santana. I do see a raised hand of Dana Hull, the board
10 representative.

11 CHIEF JUDGE STROTHER: Okay. Yeah, I can't see
12 raised hands at all. I'm sorry, you said Ms. Hull had a
13 question?

14 MS. SANTANA: Are you there, Ms. Hull or Ms.
15 Donoho?

16 MS. DONOHO: Yes, yes. I think we were going to
17 be called on next --

18 CHIEF JUDGE STROTHER: Yes. I would offer you
19 redirect.

20 MS. DONOHO: Okay. Is that -- is that time now?

21 CHIEF JUDGE STROTHER: So the witness is yours.
22 I'm sorry. Yeah, I may have skipped over that, but yes,
23 you -- your witness, your entitled to, to last with the
24 redirect questions.

25 //

1 REDIRECT EXAMINATION

2 BY MS. DONOHO:

3 Q Okay. Thank you. Mr. Mariana, would you say
4 that you were not aware of, of the various sizes of, of the
5 businesses represented by those who sit on the board
6 because we have open elections?

7 A Correct.

8 Q Okay. Thank you. And then have you -- regarding
9 our outreach efforts of, of the board, have you as a
10 handler and a grower received our newsletter that has
11 discussed this proposed change?

12 A Yes.

13 MS. DONOHO: Okay. Thank you. No other
14 questions.

15 CHIEF JUDGE STROTHER: Okay. Anyone else? Very
16 well. Okay. With that, I guess we need to offer into
17 evidence Mr. Mariani's testimony, which is Exhibit 11. Any
18 objection to entering Exhibit 11 into the record? Hearing
19 none, Exhibit 11 is accepted into the record.

20 (The document referred to was
21 marked for identification as
22 Exhibit 11 and was received
23 in evidence.)

24 CHIEF JUDGE STROTHER: By the way, you may step
25 down or whatever we're going to call it, Mr. Mariani. I

1 think it's 12:10 West Coast time, I think now would be a
2 good time for our lunch break. I did not offer, as I said
3 I would when we reconvened with this witness that anyone
4 out there who desires to testify who is not on the witness
5 list now can submit that request to the appropriate folks
6 and with the supporting documentation, not, not too late.
7 Anyone that wants can testify.

8 (Whereupon, at 3:08 p.m., the hearing was
9 recessed for lunch, to reconvene at 3:45 p.m. later that
10 same day.)

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A F T E R N O O N S E S S I O N

(3:45 p.m.)

1
2
3 CHIEF JUDGE STROTHER: All right, back on the
4 record. I guess again I'll make the same offer that I had
5 before, that anyone in the audience by whatever means, if
6 they'd like to submit testimony, please contact the
7 appropriate people and I don't think I need to go over the
8 details of that. But anyone that has something they want
9 in the record, that's the way to do it.

10 MR. HATCH: If I may jump in, Your Honor?

11 CHIEF JUDGE STROTHER: Yes, Mr. Hatch.

12 MR. HATCH: This is Andy Hatch with USDA.
13 Lashawn Williams is the recipient of anybody wanting to
14 submit testimony or exhibits. She needs to clock off today
15 -- clock out today at the end of the day in 45 minutes. So
16 if anybody has any documents, they can send them to me at
17 andrew.hatch@usda.gov and then she'll be back on line
18 tomorrow.

19 CHIEF JUDGE STROTHER: Very well, Mr. Hatch.

20 MR. HATCH: Thank you.

21 CHIEF JUDGE STROTHER: andrew.hatch@usda.gov.

22 All right. Any other preliminary business before we call
23 our next witness?

24 (No response.)

25 CHIEF JUDGE STROTHER: All right. I have Mr.

1 Eric Heidman listed as Diamond Foods, but I assume this is
2 another witness on behalf or really sponsored by the
3 California Walnut Board. Mr. Heidman?

4 MR. HEIDMAN: Yes.

5 CHIEF JUDGE STROTHER: Are you ready to testify?

6 MR. HEIDMAN: Yes.

7 CHIEF JUDGE STROTHER: Let's swear you in.

8 Whereupon,

9 ERIC HEIDMAN

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

12 CHIEF JUDGE STROTHER: All right. Well, there's
13 someone from the California Walnut Board that would like to
14 conduct examination of Mr. Heidman or should we just let
15 him go ahead and give a statement?

16 MS. DONOHO: He can just go ahead and give a
17 statement. Thank you.

18 CHIEF JUDGE STROTHER: Okay. Mr. Heidman, the
19 floor is yours.

20 DIRECT TESTIMONY

21 MR. HEIDMAN: Okay, thank you. My name is Eric
22 Heidman. That's E-R-I-C, H-E-I-D-M-A-N. I'm a small
23 walnut grower and also Vice President of Grower Services
24 with Diamond Foods, a large handler. Our address is 1050
25 Diamond Street, Stockton, California 95205. I'm testifying

1 today as a small grower and a large handler. I'm a
2 California Walnut Board member and serve on several
3 committees, including the Market Order Revision Committee
4 and Grades and Standards. Today, I'd like to discuss
5 several justification points regarding the proposal to
6 revise quality control and inspection. I will be
7 addressing sections 984.50, 984.51, and 984.52, as
8 published in the Notice of Hearing.

9 The purpose of the proposed amendments is to
10 revise the market order sections 984.50, grade, quality,
11 and size regulations; 984.51, a section certification of
12 inshell and shelled walnuts; and 984.52, processing of
13 shelled walnuts. The revised authority will remain in
14 place subject to regulations the CWB can implement in the
15 future as necessary.

16 The amendment requires conforming changes to
17 include a new mechanism for excessive collection, section
18 984.69; revisions to the definitions of sections 984.12,
19 substandard walnuts; and 984.32, decertify, and also adds a
20 provision for the application of fees for late payments.
21 Additional conforming changes include the removal of
22 sections 984.450, 984.451, and 984.452. If implemented,
23 the proposal will better align the order and market-driven
24 practices and eliminate redundancy inspection or reducing
25 costs and administrative burden for handlers in the CWB.

1 I'm here with Grades and Standards Committee and
2 we undertook discussions regarding modernizing inspection
3 in the fall of 2020. The CWB has continued to exhaustibly
4 evaluate processes under market order 984 to make the order
5 work harder for industry in today's environment. What was
6 efficient in 1948 does not reflect the current and evolving
7 needs of industry. The recent addition of credit back
8 authority was published in March of 2021. The market
9 promotion is a testament to the industry's desire to use
10 every means possible to improve the effectiveness of the
11 order.

12 The industry has a broad and diverse base of
13 handlers. These businesses vary in size, scale, customer
14 base, and walnut products they process. The original
15 grades and standards enacted in 1948 were put forth with
16 varieties that no longer exist. They're not viable in the
17 domestic and international markets. The industry has grown
18 exponentially over the past 73 plus years, further making
19 USDA grades and standards outdated and obsolete. The
20 quality control programs across the industry have also
21 advanced and innovated significantly over time. Customer
22 specifications are also at higher standards and industry
23 handlers already go above and beyond USDA grades and
24 standards to meet customer expectations and promote
25 quality.

1 In the past decade, the industry has made
2 significant infrastructure investments to manage over
3 300,000 tons of growth, from processing fruit, to storage,
4 investment in technology and equipment that ensures food
5 safety and quality standards that not only meet, but exceed
6 USDA standards, securing California's position as the
7 global leader in walnut trade.

8 The market demand for California walnuts has
9 continued to grow because of our quality reputation.
10 However, the quality that drives the market today is driven
11 by customer needs that well exceed USDA grade and
12 standards. Our handlers have spent millions of dollars to
13 make capital equipment investments, ensuring compliance
14 with FDA food safety, quality, and traceability
15 requirements, while also investing in human capital to
16 oversee rigorous programs that meet market-driven quality
17 standards. This investment is above and beyond that of
18 USDA requirements, resulting in the redundancies in
19 processes such as dual inspection and duplicate costs to do
20 so.

21 At USDA's guidance, the Grades and Standards
22 Committee and section agency and staff developed a proposal
23 that would allow the industry to use a honor-based method
24 for inspection. The proposal was subsequently denied
25 because it was deemed by USDA that the two-tiered system

1 proposed would not be feasible. As an infrequent
2 verification program cannot ensure the minimum quality
3 standard for being met as required under the marketing
4 order. The USDA letter dated 6/4/2021 and digitally signed
5 by Sonia Jimenez, Deputy Administrator.

6 Additional alternatives works for; however, every
7 solution require a long-term process of resolution, which
8 limited the industry's ability to act swiftly to address
9 ongoing needs. Complexities of the order left the industry
10 with few viable solutions that would enable inspection to
11 be streamlined, improve efficiency, and able to access a
12 collection outside of certification about walnuts, thus
13 necessitating the industry pursue a formal solution, change
14 inspection authority, and make the conforming changes to
15 the order.

16 Currently, a moratorium on section enforcement is
17 in place during the formal rulemaking process. This
18 moratorium was effective September 1, 2021, the start of
19 the Board's 2021-22 marketing year. Business has continued
20 as prior to the moratorium with handlers meeting customer
21 needs, which far exceed USDA grade and standards. The
22 proposal eliminates the burden for all handlers by reducing
23 the aforementioned redundancies, associated costs, and
24 easing regulations. It modifies the quality control
25 authority to maintain it should the industry choose to

1 reinstate quality regulations in the future.

2 I support the proposed changes in section 984.51,
3 984.52, 984.450(c), 984.451(a) and (b), 984.452,
4 984.464(b), that eliminate the requirements for outgoing
5 mandatory inspection and occurring grade quality
6 regulations, while preserving the Board's authority to
7 propose and implement future inspection and certification
8 requirements and/or grade quality size regulations,
9 sections 984.12, 984.32, 984.50, 984.64, 984.69, 984.77,
10 984.459, 984.472, and 984.476.

11 Diamond Food has discussed the inspection process
12 with our grower board in person and with our general grower
13 basic grant, citing the background work and reasoning that
14 has gone in to identify redundancies, inefficiencies, and
15 critical concerns to the current process relative to the
16 order and marketing environment. We've communicated the
17 process undertaken between the Board Grades and Standards
18 Committee and USDA, as well as the Secretary's rule in
19 leading up to the decision to suspend this section. We've
20 laid out the implications of suspension relative to the
21 assessment collection and provided general timeline for the
22 rulemaking and referendum process. That is the end of my
23 testimony. Thank you.

24 CHIEF JUDGE STROTHER: Okay. Any questioning by
25 the California Walnut Board?

1 MS. DONOHO: No, thank you.

2 CHIEF JUDGE STROTHER: Anyone from the USDA? No
3 one from the USDA has any questions for this witness?

4 (No response.)

5 CHIEF JUDGE STROTHER: Okay. Anyone from our
6 Zoom participation have any questions for this witness?

7 MR. QUINONES: Excuse me, Your Honor, this is
8 Geronimo. I apologize, I was on mute, but I do -- I am
9 from USDA and I do have some questions for Mr. Heidman.

10 CHIEF JUDGE STROTHER: Okay. You may proceed.

11 MR. QUINONES: Thank you.

12 CROSS-EXAMINATION

13 BY MR. QUINONES:

14 Q Good afternoon, Mr. Heidman.

15 A Good afternoon.

16 Q So I'm going to just lead in a couple of
17 questions concerning your membership on some of the
18 committees that you serve. Specifically, what is your role
19 on the Marketing Order Revision Committee?

20 A I'm one of the members there that from time to
21 time takes up action on different items that affect the
22 revising the marketing order. The last one I was on was
23 regarding the credit back initiative that was done
24 approximately a year -- two years ago.

25 Q Okay. And you also state in your testimony that

1 you served or that you are the chair of the Grade and
2 Standards Committee?

3 A That's correct.

4 Q How long have you served as the Chair on that
5 Grade and Standards Committee?

6 A I believe I'm going into my third year as the
7 Chair and I've been on the Committee for I believe six
8 years.

9 Q Can you explain your responsibilities as the
10 Chair of that Grade and Standards Committee?

11 A As the Chair, I help, you know, obviously we
12 would prioritize different initiatives that the Board is
13 undertaking relative to that. So a lot of that involves
14 research around the post-harvest work, which includes shelf
15 life, pasteurization, also working on other various
16 projects, and then also it was very pertinent to this
17 process of inspection and so that was one of the major,
18 major projects that we had undertaken here most recently.

19 Q In your opinion, would you say the other members
20 of the Grades and Standards Committee are familiar with the
21 grade and quality regulations of the marketing order?

22 A Yes, I believe so.

23 Q And to your knowledge, have there been any
24 revisions to the quality and size regulations of the order
25 since it was enacted in 1948?

1 A To my knowledge, no, nothing significant as far
2 as I know.

3 Q Okay. Would you say the members of the Grades
4 and Standards Committee represent both small and large
5 businesses?

6 A Yes.

7 Q Okay. I want to ask you a couple of questions
8 regarding your testimony on quality control and
9 inspections. In your testimony, you speak to fall 2020
10 discussions about modernization of the inspections. Could
11 you please speak to that a little bit more?

12 A Yeah. At that time, yeah, it was really observed
13 that we were ending -- you know, doing duplicate processes
14 for walnut inspections, meaning that most handlers in this
15 industry have a customer base that requires product that's
16 far beyond USDA standards. As a result, the handlers
17 basically employed an entire QC team that was qualified in
18 inspecting to the customer standards for every order. At
19 the same time, there was this ongoing inspection by the DFA
20 to the USDA standards and in the end that standard being
21 far below the customer expectation. It was really looked
22 at as just a duplicate cost that was essentially a waste of
23 time.

24 So in 2020, we had discussions of how it would
25 look like to modernize it. We engaged in further

1 discussions to look at encompassing, you know, the existing
2 food safety programs and inspection or quality programs
3 that certain handlers obtained under different programs
4 such as BRC, SUF, and I believe that was talked about
5 earlier, and try to figure out a way that we could utilize
6 the qualifications deemed by those programs for our own
7 staff to allow handlers to self-inspect. That program that
8 we conceptualized then was to also have those programs and
9 the program participants audited by the DFA, essentially
10 changing DFA's role from an inspection of agency to an
11 audit, to bring more legitimacy to that proposal.

12 Throughout the process, that was deemed a no go
13 by USDA and essentially leading up -- you know, we kept
14 working with USDA to try to evaluate existing programs,
15 such as the Partners of Quality and the other one is
16 escaping me right now, but -- and none of those really
17 addressed the concerns of eliminating the duplication. And
18 the marketing order is such that it's written with
19 assessments being tied to outbound inspection, really
20 essentially tied our hands in terms of being able to change
21 how we -- you know, we were able to inspect and then
22 assess. Coupling that with the critical nature of the
23 business environment that we were in with the shipping
24 constraints, the lack of labor on the part of DFA
25 inspection agency, as was mentioned earlier, led us to, you

1 know, continue discussions throughout the summer months,
2 leading up to, you know, in August before harvest started,
3 trying to find a way to work around it, which ultimately
4 led us to, you know, as a committee to recommend to the
5 Board that suspension would be the most equitable play to
6 preserve the marketing order and allow, you know, handlers
7 to reverse back in their own product, to keep inspecting
8 their own product, while at the same time allowing handlers
9 to use the DFA for inspection, to continue using DFA and
10 allow them to complete their inspection.

11 So all that said, there was a lot of discussions,
12 you know, starting in the fall of 2020 that continued on
13 amongst the committee and even the larger board to, you
14 know, evaluate the options at hand.

15 Q Thank you for that. Also in your testimony, you
16 speak that certain varieties no longer exist in the
17 industry. Could you explain why those varieties no longer
18 exist?

19 A There's many reasons. I mean, you know, walnut
20 trees have a definite age to them before the production
21 and/or diseases render the production, you know, not
22 economically viable for the grower. But the biggest
23 change, in my opinion, was the invention of the improved
24 varieties and notably Chandler. Chandler is 58 percent of
25 our total industry production, it's grown in other

1 countries as well, and it's really what, you know, the
2 consumer, especially export consumers, desire. So as a
3 result, when you have demand for certain supply, you know,
4 the value of those varieties goes up. In comparison, it
5 renders older, lower production varieties that aren't
6 necessarily -- don't contain the same quality traits the
7 buyers want, renders them much lower value. And, you know,
8 walnuts are definitely a long-term crop, but, you know,
9 growers are going to do everything in their power to
10 maximize, you know, revenue in a timeframe they have them.

11 Q And in regard to quality and grade standards, how
12 are these current varieties differ from the previous
13 varieties that no longer exist under the order?

14 A I think what's -- some of the main quality
15 characteristics of, you know, the Chandler variety in
16 particular have changed. The kernel color is much lighter.
17 You know, the way that the kernel is cracked through
18 commercially available processing equipment allows us to
19 produce a much higher percentage of what I would call
20 pristine halves. And in the walnut world, light color and
21 larger pieces and perfect halves garner the most money. So
22 that variety with its inherent characteristics has really
23 changed the output of product. That output of product has
24 been taken by handlers and with the work of the Walnut
25 Board Commission through marketing programs has introduced

1 that product to the world, and it's really what is driving
2 the customer specifications today.

3 Q Thank you. And also in your testimony, you state
4 that the quality control program of handlers across the
5 industry have also advanced and innovated significantly
6 over time. Can you explain further how those qualities
7 assurance programs have advanced throughout the industry?

8 A Yeah. I think it was mentioned earlier some of
9 the other quality programs and I really categorize this,
10 it's really a -- truly a food safety and quality system
11 where they both work in tandem. You know, because the
12 customer specifications have increased beyond what the
13 inspections to USDA standards would allow, the handler
14 thought to employ our own QA team or quality control team,
15 if you will, to inspect. You know, we're looking for
16 tolerances much tighter than what USDA is and they've also,
17 the specifications with our customers have evolved to look
18 at quality attributes that aren't even inspected through
19 the USDA program, things like, you know, the microanalysis
20 for microbial whatnot. We also look at rancidity by
21 measuring their peroxide levels, free fatty acid levels.
22 Those are things that are far beyond what the basics of
23 physical, you know, call it product quality inspection that
24 USDA requires.

25 So with the customer specifications increasing,

1 you know, we've merged into these, you know, more
2 recognized food safety programs where, you know, you don't
3 necessarily need a third party. You just need to have good
4 qualified staff that is audited annually and shows that
5 your -- you know, the handlers were competent to inspect
6 product and as long as we keep inspecting product and being
7 certified and providing our customers the high quality
8 product they desire, that's really where business -- you
9 know, that's where, really where the business in this
10 industry has gone.

11 Q Okay. I want to ask you a question about the
12 audit-based method of inspection, which in your testimony
13 you say was denied by the USDA. Could you explain to us
14 how this proposal is different from that audit-based
15 method?

16 A Well, this proposal, we're essentially
17 eliminating all the mandatory inspection. The proposal
18 that was rejected by the USDA was to try to keep, you know,
19 keep the standards in place, both on our -- you know, on
20 our finished, as well as imported product, and utilize the
21 qualifications of the handlers' various food safety
22 programs. In developing that two-tiered audit-based
23 program methodology, it was essentially a voluntary
24 program. If you wanted to continue to use DFA to inspect
25 to USDA standards, you could still do that. If you wanted

1 to utilize your qualified staff and have DFA audit the
2 results on a monthly basis or a bi-monthly basis, you could
3 do that, too. We built in, you know, penalties for non-
4 conformance, you know, and really thought we had a very
5 palatable program, ultimately that being denied saying that
6 there was lack of oversight by having DFA do the auditing
7 and not USDA. Plus with the way that the marketing order
8 was written relative to assessment collection, there was
9 some hurdles that had needed to be overcome there as well.

10 So, I mean, what we're proposing today is quite a
11 bit different. I think what we're proposing today, you
12 know, it does address the needs of today with recognizing
13 that as an industry and as handlers, both big and small,
14 that we've really stepped up our ability to provide, you
15 know, essentially the world with product that's going to
16 meet their standards. And seeing how that standard is so
17 much beyond USDA typical requirements, I think this is
18 really the best outcome for the industry today.

19 Q Okay. Speaking on the current inspection
20 moratorium, which is in place, have you witnessed any
21 affects on quality since that moratorium has been in place?

22 A Our company, personally, we have not changed
23 anything. I mean, we've -- other than eliminating the
24 duplicate inspection piece and creating efficiencies around
25 not having another entity in our plan, we've not changed

1 our quality thresholds for our customers, so there really
2 have been no change there. I have spoken with other
3 handlers who continue to use the DFA for inspection, but
4 because of the moratorium, they've used the DFA essentially
5 as a contracting inspection agency, meaning that they're
6 having the DFA inspect to the customer standards, wherein
7 past years or prior to the moratorium, the DFA would only
8 inspect to the USDA standards. So I guess in a roundabout
9 way, we can assume, you know, that quality actually did
10 improve with the moratorium.

11 Q Okay, thank you for that. I just got a couple
12 more questions, basic questions about the new proposed
13 assessment mechanism. Are you familiar with that new
14 assessment mechanism that's being proposed?

15 A Yes, I am. I think some of my colleagues will
16 get into it in a little more detail; but, yes, I'm
17 familiar.

18 Q In your opinion, could you explain why there's a
19 need for a new assessment mechanism?

20 A If we're going to, you know, not tie inspections
21 or excuse me, an assessment to a certification and
22 ultimately back to an inspection, then we have to figure
23 out some way to fund the activities of the California
24 Walnut Board. Given the existence of the California Walnut
25 Commission and how assessments are currently done there,

1 and we have basically a system in place that we can
2 parallel, which would essentially also bring some
3 operational savings, not only to handlers, but the Walnut
4 Board staff, as well, since we're already capturing it.
5 And I think given how the assessment collection, you know,
6 would be done through the monthly shipping reports, I
7 believe it's Form 6, we would -- you know, it's something
8 that all handlers are currently doing. It's something that
9 all -- or, you know, they're currently turning those in
10 every month. We have a track record of familiarity with
11 the process. We're now just attaching an assessment
12 mechanism to that. And as far as paying the assessments
13 out, given the proposed timeline for the handler payments,
14 it really aligns pretty well with the overall cash flows
15 that would have normally paid back to the Board, even with
16 the prior system in place. So we don't really see any, you
17 know, economic hardship regardless of the size of handler,
18 the timing of your sales. It tends to align pretty well.

19 Q And in your opinion, do you feel this new
20 proposed assessment mechanism would be equally beneficial
21 to both small and large businesses?

22 A Yes, yeah.

23 MR. QUINONES: All right, thank you very much,
24 Mr. Heidman. I have no further questions, Your Honor.

25 CHIEF JUDGE STROTHER: Okay. Anyone else for

1 USDA who wants to have questions?

2 MS. CHILUKURI: Yes, Your Honor, this is Rupa
3 Chilukuri for USDA.

4 CHIEF JUDGE STROTHER: Counsel, your witness
5 then.

6 MS. CHILUKURI: Thank you. So, Mr. Heidman, I
7 was hoping to ask you some questions about the regulatory
8 (technical interference). Mr. Hatch, if you could actually
9 pull up that ECFR -- it's the walnut marketing order,
10 itself -- that would be very helpful. Yeah.

11 MR. HATCH: Pulling up the ECFR, just might take
12 a moment.

13 MS. CHILUKURI: Okay, thank you.

14 BY MS. CHILUKURI:

15 Q I guess while we're waiting for that, my question
16 relates to 984.11, 984.12. So I'm trying to understand
17 with this proposal the meanings of merchantable walnuts and
18 the meanings of substandard walnuts, so I'd appreciate your
19 thoughts on that, Mr. Heidman.

20 A I think with the proposal, I mean that 984.12, I
21 mean, it all hinges back to the Board's authority to
22 reinstate quality. So if we reinstate 984.50, we're going
23 to bring back the provisions for quality regulations that
24 would cover any of these other subsets, you know, whether
25 it's substandard or whatnot.

1 Q And does the same principle applied to the
2 definition of merchantable walnut, that there has to be
3 minimum grade and size regulations effective pursuant to
4 984.50 in place for there to be merchantable walnuts or for
5 there to be a substandard walnut; is that correct?

6 A I believe that's correct, yeah.

7 Q And just for everyone's reference, Mr. Heidman
8 and I were just discussing 984.11 and 984.12. So with
9 substandard walnuts, the inspection and the certification
10 process defines those walnuts, right, and can identify what
11 walnuts are substandard. So what mechanism is now in place
12 to find those substandard walnuts, to ensure that, you
13 know, I, as a consumer, don't end up getting those types of
14 walnuts?

15 A I mean, I think, you know, what we're really
16 going for here is to allow the free market to work and the
17 relationship between a handler or processor and their
18 customers. I mean, the marketplace is extremely
19 competitive whether it's the domestic market or the export
20 market. So if you're putting substandard quality, let's
21 just say even lower than the competitor's quality into your
22 pack, it's going to go notice. Not only does it go notice
23 by the buyer or that -- you know, that customer, but
24 definitely by the ultimate consumer. So, you know, in some
25 cases here, yes, we are eliminating the definition, but

1 we're really not changing the essence of what we're doing
2 in the marketplace, which is ultimately where we're
3 governed as sellers.

4 Q Okay. Thank you, Mr. Heidman. Would you say
5 that applies across the board, in that small handlers also
6 are affected by these market forces such that they have to
7 put out quality walnuts to be able to compete? They can't
8 give people substandard walnuts or are they in a different
9 kind of league?

10 A No, absolutely. I mean, you know, everybody is
11 playing into the world market, you know, in some way,
12 shape, or form, and it doesn't go without its competition.
13 So, I mean, you know, I think everybody is really trying to
14 elevate their quality standards and I think the bottom line
15 is that everybody has the opportunity because the
16 prevalence of the improved varieties that our industry
17 produces, mainly Chandler, Howard, Tulare, that's over 90
18 percent of our production and, you know, everybody has
19 access to the best material. So, I mean, our level of
20 substandard walnuts, while I can't exactly provide a
21 quantified number, just the amount of off grade and
22 inedible material at any given year is much less than what
23 we've had in past generations where we had varieties that
24 were more susceptible to insect damage, that produced lower
25 quality kernels because of color and, you know -- so

1 there's a lot of factors that go into that, which kind of
2 levels the playing field for all handlers.

3 Q So now turning to 984.64, this is the current
4 regulations. Can you tell me -- I guess, so 984.64 first
5 with disposition of substandard walnuts, so this is sort of
6 linked to the whole conversation we've been having right
7 now. But I understand that 984.64 is now removed from the
8 order. Is that your understanding as well or that's the
9 proposal?

10 A Yes, yeah. It would only -- you know, yeah, it
11 would be removed.

12 Q Okay. So in terms of handlers disposing of their
13 substandard walnuts, what would they do if the proposal
14 were effectuated?

15 A I believe in all practicality, that would not
16 change. The disposition of those substandard walnuts would
17 go to the current outlets that are out there and the
18 current manufacturers who you converted in the oil stock or
19 v stock. Handlers today are looking for ways to, you know,
20 maximize their revenues. This is a current revenue stream.
21 They're not going to deviate from that. It's also a way to
22 mitigate costs. If you're not going to continue to have
23 your substandard nuts go to these outlets, then it's a cost
24 that as a handler, you would have to bear to figure out
25 your own disposition of it. So I don't believe that

1 changing this section or eliminating this section out of
2 the order is going to make a practical change to how we
3 operate and to anybody's detriment.

4 Q Thank you. And now turning to 984.72 in the
5 current C.F.R., so that is referring to reports of
6 merchantable walnuts handled. Can you talk a little bit
7 about what that report currently looks like?

8 A Not exactly. I mean, I believe that ties back to
9 the certified count, if I'm not mistaken, but I can't give
10 it much more clarity.

11 Q Okay. So one reason I'm asking this, this
12 proposal, if it were to be effectuated, is -- I'm trying to
13 figure out the utility or value of this report and what it
14 would reflect, in that I'm also trying to figure out what a
15 merchantable walnut is, if it's connected to quality
16 standards that are no longer in place.

17 A You know, we eliminated the term "merchantable"
18 when really this report would not be that valuable. I
19 think, you know, we are -- ultimately there's a level of,
20 you know, utility or sellability within each crop. The
21 part that's rendered not merchantable is rather small. It
22 can vary depending on, you know, insect pressure and the
23 amount of off-grading occurring in any one year. But I
24 don't know that having -- I think the way you were
25 proposing the mechanism for assessments is a much

1 straightforward approach that eliminates this vagueness of
2 what's merchantable, what's not. You know, assessing on an
3 inshell basis is really a fair way to do it because, you
4 know, if you were to try to boil it down to what's
5 merchantable and what a handler sells and what they don't
6 sell, that's not necessarily going to look that way either
7 under current circumstance or the current market
8 provisions. So I don't think that, you know, getting rid
9 of this term, if you will, and the associated in that is
10 going to change, you know, the outcome or anything within
11 the industry significantly at all.

12 MS. CHILUKURI: Okay, thank you. And I would
13 also ask you to take a look at, let's see, Exhibit 6. So,
14 Mr. Hatch, if you could pull up Exhibit 6.

15 MR. HATCH: Did you say Exhibit 6, Rupa?

16 MS. CHILUKURI: Yes.

17 MR. HATCH: Six.

18 BY MS. CHILUKURI:

19 Q Okay. So Exhibit 6, the left side has the
20 language as it currently reads relating to 984.67,
21 exemptions from assessment. And, Mr. Heidman, I'd just
22 like to know your thoughts on the right column, whether
23 this right column, this should be the language that's in
24 the C.F.R. So some language had inadvertently been removed
25 in part B, all those exemptions, the highlighted language,

1 and everything in the right column should be as 984.67
2 should read.

3 A Yeah. I think those are generally reasonable.

4 MS. CHILUKURI: Thank you. I have no further
5 questions.

6 CHIEF JUDGE STROTHER: Okay. Anyone else for
7 USDA?

8 MR. HINMAN: Yes. Donald Hinman, USDA. Thank
9 you.

10 CHIEF JUDGE STROTHER: Yes, Mr. Hinman, your
11 witness.

12 MR. HINMAN: Thank you, Your Honor.

13 BY MR. HINMAN:

14 Q Mr. Heidman, thank you very much for your
15 testimony here. I'll just be very simple and just try to
16 just stay something along the lines, as far as the overall
17 proposal here that went into effect, your views of you can
18 say words or benefits to Diamond and the operation there
19 and to administrate in general of the set of proposals and
20 compare that to if you think there's any cross in terms of
21 financial or administrative burden that would increase or
22 not, what's your comments about either general views of
23 benefits and cost of the overall set of proposals. Thank
24 you.

25 A I think the overall benefits, you know, clearly

1 there's an economic benefit with the reduction of the cost
2 of inspection, which is then, you know, estimated at nearly
3 six million dollars currently, which is quite honest a cost
4 that's going up with the cost of labor. So I think, you
5 know, that, in itself, is a very straightforward benefit.

6 There's additional benefits to be gained. I
7 alluded to them earlier, but when you are reliant on having
8 another staff involved in your operation, that you're
9 waiting for them to show up, to be qualified, to certify on
10 time, so that you're able to make your shipments,
11 particularly in today's shipping environment, if they're
12 not there and not working hand-in-hand with your operation,
13 that creates huge operational inefficiencies. You can
14 eliminate that and certify yourself, maintain a quality
15 relationship with your customers. There's an inherent cost
16 benefit there, too; hard to quantify that, but it's
17 definitely an operational benefit.

18 MR. HINMAN: Thank you, Mr. Heidman. Your Honor,
19 no further questions.

20 CHIEF JUDGE STROTHER: Okay. Does that complete
21 the questioners for USDA?

22 (No response.)

23 CHIEF JUDGE STROTHER: Okay. We'll turn to the
24 participants via Zoom at large. Mr. Poindexter, I notice
25 you have your hand up. Is that --

1 MR. POINDEXTER: Yes.

2 CHIEF JUDGE STROTHER: -- for any particular
3 reason?

4 MR. POINDEXTER: I just wanted to do a follow-up
5 with Eric and get a clarification.

6 CHIEF JUDGE STROTHER: Okay. So you have a
7 question, okay.

8 MR. POINDEXTER: Yes.

9 CHIEF JUDGE STROTHER: I don't think there's any
10 particular order. We'll treat you as a participant by
11 Zoom, I guess, even though you're with California Walnut
12 Board. So it's your witness, Mr. Poindexter.

13 MR. POINDEXTER: Okay. Eric, so during the
14 questioning about substandard walnuts moving into the
15 marketplace, previously, Mr. Mariani had mentioned that he
16 didn't have knowledge of any customers that would even
17 accept USDA minimum specifications. Would you agree that
18 is likely true and, if so, would the existing market
19 conditions already prevent substandard from getting into
20 the marketplace?

21 MR. HEIDMAN: I would agree that's true, both
22 aspects there. No one would accept it and then no -- you
23 know, as it currently is, it's not getting into the
24 marketplace.

25 MR. POINDEXTER: Thank you. No further

1 questions.

2 CHIEF JUDGE STROTHER: Okay. Probably really
3 should have had you wait for redirect, Mr. Poindexter,
4 since you are with the California Walnut Board. But I take
5 it, does USDA have any questions based on that last one?

6 (No response.)

7 CHIEF JUDGE STROTHER: Okay, all right. I think
8 we've covered everyone in the Zoom audience. Any
9 participants by telephone have any questions of this
10 witness?

11 (No response.)

12 CHIEF JUDGE STROTHER: Hearing none, we're back
13 to California Walnut Board. Any redirect?

14 MS. DONOHO: No redirect, Your Honor. Thank you.

15 CHIEF JUDGE STROTHER: Okay, all right. So thank
16 you, Mr. Heidman. I'll go ahead and ask whether anyone has
17 any objections to the entry of Exhibit 12, which is Mr.
18 Heidman's testimony into to the record of this proceeding?

19 (No response.)

20 CHIEF JUDGE STROTHER: All right. No objections.
21 Exhibit 12 is made a part of the record.

22 (The document referred to was
23 marked for identification as
24 Exhibit 12 and was received
25 in evidence.)

1 CHIEF JUDGE STROTHER: Thank you for your
2 testimony, Mr. Heidman. You may figuratively step down, I
3 guess.

4 (Witness excused.)

5 CHIEF JUDGE STROTHER: All right, four-thirty,
6 one-thirty, yeah, I think we'll call up the next witness.
7 Again, let's keep going again. Anybody has any testimony
8 they want to submit, let Ms. Williams know via email and
9 we'll tee it up. So next on my list is Chuck Crain with
10 the California Walnut Board. Mr. Crain, are you available
11 to testify?

12 MR. CRAIN: I am, Your Honor.

13 Whereupon,

14 CHUCK CRAIN

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

17 CHIEF JUDGE STROTHER: Okay. Anyone from the
18 California Walnut Board want to act as representative with
19 this witness or should we just have the witness go ahead
20 and present his statement?

21 MS. DONOHO: We can have the witness present his
22 statement.

23 CHIEF JUDGE STROTHER: Thank you. Okay. Mr.
24 Crain, you're on.

25 //

1 DIRECT TESTIMONY

2 MR. CRAIN: My name is Chuck Crain, C-H-U-C-K, C-
3 R-A-I-N. I'm the President of Crain Walnut Shelling, a
4 division of a family farming operation, Crain Orchards,
5 Inc. My address is 10695 Decker, D-E-C-K-E-R, Avenue, Los
6 Molinos, California 96055. I am testifying today as a
7 large grower and larger handler. I am a California Walnut
8 Commission member and serve on several committees for both
9 the California Walnut Board and the California Walnut
10 Commission. I serve on the Executive Committee, the Market
11 Order Revision Committee, Grades and Standards Committee,
12 and Market Development Committees. Today, I would like to
13 discuss several justification points regarding the proposal
14 to revise quality control and inspection. I will be
15 addressing sections 984.50, 984.51, and 984.52, as
16 published in the Notice of Hearing.

17 The California Walnut Board, established in 1948,
18 administers the federal marketing order 984 program that
19 regulates research and promotion and quality control of
20 walnuts produced and handled in California. The amendment
21 would revise marketing order sections 984.50, grade,
22 quality, and size regulations; 984.51, inspection and
23 certification of inshell and shelled walnuts; and 984.52,
24 the processing of shelled walnuts.

25 The revised authority will remain in place

1 subject to regulations the California Walnut Board can
2 implement in the future as necessary. The amendment
3 requires conforming changes to include a new mechanism for
4 assessment collection, 984.69, and provision for the
5 application of fees for late payments, which revises the
6 definitions of 984.12, substandard walnuts, and 984.32, to
7 certify. Conforming changes will remove sections 984.450,
8 984.451, and 984.452. If implemented, the proposal will
9 better align the order to market-driven practices and
10 eliminate redundancies in inspection while reducing costs
11 and administrative burden for handlers and the California
12 Walnut Board.

13 The current industry practices authorize the
14 California Walnut Board to conduct quality control
15 inspections, 984.50, 984.51, 984.52, and assessment
16 collection, 984.69 under the program. Handlers must meet
17 grade, quality, and size regulations, and all walnuts must
18 be inspected prior to being placed into the current of
19 commerce. Handlers are required to obtain a certificate
20 for each inspection that includes the handler name,
21 quantity of walnuts, and date of inspection. Each
22 handler's pro rata share of assessments is the rate of
23 assessment as fixed by the Secretary, times the kernel rate
24 of much of the walnuts you have certified.

25 Under the proposed changes, multiple benefits are

1 expected. All handlers will benefit from the modified
2 quality control authority and removal of regulations
3 pursuant to the mandate for outbound inspection through
4 redundancies in the operational processes, associated
5 costs, and administrative burden. The proposed assessment
6 mechanism would use receipts as reported on the annual crop
7 acquisition report, which is California Walnut Board Form
8 1, for the application of assessment, so there would be no
9 additional handler reporting burden. This should provide
10 for additional efficiency for handlers. Producers are
11 expected to benefit through cost savings efficiencies that
12 may result in higher grower returns. Consumers already
13 benefit from California -- benefit from quality California
14 walnuts that surpass USDA grade standards and consumers may
15 also benefit through improved pricing resulting from
16 reduced handler cost.

17 The cost of inspection to the industry is
18 approximately six million dollars annually, which is based
19 on the Dried Fruit Association of California Affairs for
20 the 2020 crop. DFA is the California Walnut Board's
21 inspection agency of record. It is estimated that
22 modifying inspection authority and removal of regulations
23 will provide efficiencies and reduce redundancies and costs
24 for administrative oversight.

25 The reduced burden on the handlers is anticipated

1 to benefit the producers through higher grower returns,
2 resulting from decreased handler cost. Handlers across the
3 industry have improved quality control programs over time
4 and have made significant investments in technology and
5 storage to ensure that quality food safety standards not
6 only meet, but also exceed USDA's standards. Handlers can
7 expect consolidation or decrease in costs as a result of
8 the revised quality authority and removal of inspection
9 regulations, as well as reduced administrative burden.

10 Under the new mechanism for assessments, there is
11 no anticipated change in cost to the handler. The proposed
12 changes to the order have been discussed at a series of
13 meetings of committee and full board Commission meetings,
14 period. Industry support has been strong for improving
15 efficiencies and saving costs. The reduced burden on the
16 handlers is anticipated to benefit the producer through
17 higher grower returns resulting from decreased cost. And
18 this ends my testimony.

19 CHIEF JUDGE STROTHER: Okay, very well. Any
20 questions from USDA?

21 MS. PANKEY: Yes, Your Honor. This is Christy
22 Pankey. I will be questioning Mr. Crain.

23 CHIEF JUDGE STROTHER: Okay. Ms. Pankey, your
24 witness.

25 //

1 CROSS-EXAMINATION

2 BY MS. PANKEY:

3 Q Good afternoon, Mr. Crain. I will begin asking
4 you questions about your participation on the California
5 Walnut Board and the California Walnut Commission. In your
6 testimony, you also stated that you are a large handler and
7 a large grower; is that correct?

8 A That is correct.

9 Q Can you tell me how long you served on the
10 California Walnut Board?

11 A I have never been a member of the California
12 Walnut Board. I have only served on California Walnut
13 Board committees.

14 Q Okay. Can you explain to me how that works
15 exactly? So you can be a member of the committee, but not
16 a member of the Board?

17 A Yes, I can. Many committee members of the
18 California Walnut Board are not members of the Board.
19 Every individual within the industry has different
20 strengths and weaknesses. I think my election to never run
21 for the Board is really a function of my not submitting my
22 name to run for a position of the Board. I have elected to
23 use my time to help steer the California Walnut Commission
24 and we just felt that that was a better option. We're
25 limited in our ability to serve on virtually everything

1 that happens in both Commission and the Board by virtue of
2 the amount of time that's necessary to be committed and I'm
3 currently representing the Commission on the Executive
4 Committee and the Board on Market Order Revision, Grades
5 and Standards, and Market Development. So I am still
6 splitting my time up between the two, but I've just never
7 elected to run for the Board position.

8 Q Mr. Crain, could you tell me, since you're a
9 representative of the Commission on these committees, as
10 part of a committee member, are there other members from
11 the industry that are also serving that may also be a
12 member of the Commission?

13 A I would say -- well, first of all, I don't know
14 the answer to that. I've never really thought that
15 through. But, yes, I would supposed that would be the
16 case.

17 Q Okay. So could you tell me how many members --
18 how many individuals are a part of the Grades and Standards
19 Committee?

20 A I don't have the exact answer to that. There are
21 approximately 10 of us, 8 to 10 of us that are members, I
22 believe, but I can't respond as to exactly how many.

23 Q Is there a particular process that industry
24 members would need to go through in order to be selected to
25 sit on one of the Board's committees?

1 A You know, I actually don't know what the
2 selection process is, to be honest with you. We have to
3 defer to the Board to comment on that. I have been
4 involved in Grades and Standards on the committee for
5 probably, well, I'd say at least 15 years, so I've been
6 involved for quite some time; on the other committees, you
7 know, to a lesser degree.

8 Q Okay. So do you hold an officer or leadership
9 position on the Commission?

10 A Not presently. I'm just a Commission member at
11 this point. I have held both chairman and vice chairman
12 positions in the past.

13 Q Okay. Could you explain to me what the
14 relationship is between the Board and the Commission?

15 A The relationship between the Board and the
16 Commission, yes, I can explain that. The California Walnut
17 Board is what I refer to as the watchdog agency to oversee
18 the California walnut marketing order. It has been
19 responsible for, you know, enforcing the minimum standards
20 and so forth. The Board deals with domestic advertising
21 and promotional activities. The California Walnut
22 Commission is basically -- was developed in the early '90s
23 to be able to lobby for federal matching funds. The
24 California Walnut Board cannot lobby the U.S. Government
25 for matching funds, for promotional activities. The

1 California Walnut Commission is generally responsible for
2 export market development, whereas the California Walnut
3 Board is primarily responsible for domestic market
4 development.

5 Q Thank you. So of all the committees that you
6 serve on, which ones made recommendations to the Board in
7 regards to the proposed amendments?

8 A It started with the Grades and Standards
9 Committee in the fall of 2020.

10 Q And what did they recommend?

11 A Discussion took place during a Grades and
12 Standards Committee meeting, looking for the potential to
13 reduce costs and create efficiency by not having duplicity
14 of inspection of outbound product, and that committee
15 investigated the possibilities and had discussions with
16 USDA regarding that potential direction.

17 Q Okay. So to clarify, the Grades and Standards
18 Committee recommended the elimination of inspections?

19 A It recommended to the Board that discussions be
20 held relative to the potentiality of modifying the
21 marketing order and to revise standards to a higher level.

22 Q Did they make that recommendation to the full
23 Board or did they make that recommendation to the Executive
24 Committee first?

25 A That was made to the Executive Committee first.

1 Q Okay, thank you. You also serve on the Marketing
2 Order Revision Committee?

3 A That is correct.

4 Q Did they make a recommendation to the Executive
5 Committee?

6 A The Marketing Order Revision Committee was
7 involved in the discussions with USDA as well and at that
8 point the direction was given by the Board to the Market
9 Order Revision Committee to research what steps were needed
10 to modify the order.

11 Q Okay. Could you kind of specifically tell me
12 what type of revisions were discussed? Were they talking
13 about the conforming changes or what type of
14 recommendations did they actually present to the Executive
15 Committee?

16 A The recommendations were basically those that
17 were outlined by my colleagues earlier in their testimony and
18 there were several different recommendations. There were
19 questions regarding the duplicity of outbound inspection in
20 different facilities. We discussed how different handlers
21 with different facilities in capacities would be able to
22 deal with that in an equitable manner. We really reviewed,
23 you know, how to best move forward. And so there were lots
24 of different ideas that came up and over a period of time
25 we ended up employing those different ideas and combining

1 them into some ideas to move forward. And the
2 recommendations that we -- or the desired results that we
3 were looking for were basically difficult for USDA to
4 authorize and basically we were turned down and needed to
5 go back to the drawing board and, you know, make changes
6 and one of those changes required us to do away with the
7 order, with a portion of the order and go through this
8 process to do so. That was not the original intent of
9 either the Grades and Standards Committee, the Board, or
10 the Market Order Revision Committee.

11 Q Okay. And a clarification, could you explain
12 what the original recommendation was to the Board? I
13 believe another individual witness spoke about these two-
14 tiered audit system. Was that to only have certain
15 handlers get -- only certain handlers would be required to
16 get the inspections and other could rely on their internal
17 process and then they would be audited on that process
18 later? Is that correct? Could you explain that?

19 A Yes, I'll attempt to do that. There were two
20 programs that were USDA programs that were in place at the
21 time we made the request that would allow for the processor
22 to basically do his own inspection. And it was an audited
23 inspection process where the processor would test the
24 product and sample the product on an in-line basis while
25 the goods were being packed and the results would be

1 audited at a later time to make sure that the processor was
2 meeting all of the minimum standard criteria. This was --
3 these were two systems that were in place, but they didn't
4 really lend themselves well to the walnut industry and
5 certainly didn't lend themselves well to the smaller
6 handlers that didn't really have the facilities or the
7 manpower in place to conduct that type of an inspection
8 process. So we elected to take the high road and try to
9 come up with a system that worked for all handlers
10 regardless of size and facilities that was equitable and
11 that's what we believed we did.

12 Q Okay, thank you. Could you tell me what -- you
13 also serve on the Market Development Committee. What was
14 their role in regards to the development of these
15 proposals?

16 A There is no relationship between the Market
17 Development Committee and these proposals. The Market
18 Development Committee works in developing new markets,
19 allocating funds for promotional activities to develop new
20 markets and so forth.

21 Q Thank you. So the recommendations that were made
22 by the Grades and Standards Committee for the elimination
23 of inspections, did the Board vote unanimously on that
24 recommendation?

25 A Was it unanimous? I can't remember, but I

1 believe it was. I would have to defer back to the minutes
2 of the meeting to give you that answer.

3 Q Okay. And the new mechanism, the proposal for
4 the new mechanism for the collection of assessments, which
5 committee made that recommendation?

6 A Well, ultimately, it was -- the recommendation
7 was approved by the Board, but the Grades and Standards
8 Committee worked on the ideas, as to how it would be
9 equitably implemented and those ideas went to the Board for
10 approval and then they were approved. And the Market Order
11 Revision Committee was then engaged in the communications
12 to -- you know, with USDA for further reaction.

13 Q Okay. And when the Board voted, was that
14 unanimous as well?

15 A Ma'am, I can't remember. I believe it was, but I
16 would have to check the minutes.

17 Q Can you recall if further discussions were needed
18 following any of the recommendations made to the Board in
19 regards to the proposed amendments?

20 A There were further discussions relative to, you
21 know, how the assessments would be gathered and those were
22 probably the most recent discussions. What forms and so
23 forth for reporting would be used and so forth, that would
24 be -- those would be the only discussions that I recall.

25 Q The reporting or what forms would be used for the

1 reporting of?

2 A For the purpose of collection of assessments.

3 Q Okay. And that would be Form 1, correct, the
4 acquisition report?

5 A That is correct, the CWB Form 1.

6 Q Okay, thank you. Okay. Mr. Cain, I will begin
7 asking you questions more in-depth, I guess, about the
8 proposed amendments. In your testimony, you stated the
9 proposed amendments requires conforming changes. Do you
10 support the numerous conforming changes and revisions to
11 the sections outlined in the Notice of Hearing and also
12 specifically section 984.12 and 984.32, as indicated in
13 your testimony?

14 A I do.

15 Q Thank you. In your testimony, you mentioned that
16 if implemented, the proposal would better align the order
17 to market-driven practices. Could you explain what you
18 mean by market-driven practices?

19 A The current standards required to be able to
20 introduce shelled walnuts into commerce significantly
21 exceed the USDA minimum standards. All successful
22 processors are meeting those standards. The market is the
23 determining factor in what is acceptable and the standards
24 are such to where they're basically obsolete. My
25 colleagues discussed that in earlier testimony. The

1 standards are if someone was to pack product to the USDA
2 minimum standards, therefore the product would have been
3 considered to be merchantable. Generally, the market will
4 not accept that product by virtue of the fact that it just
5 has too many contaminants in it. And, you know, they can't
6 afford to put that in their -- use that as an ingredient
7 because it will basically result in consumer complaints,
8 you know, problems with liability due to broken teeth and
9 so forth. So that's what I meant, the market is basically
10 -- has elevated California processors to a level that
11 requires them to process and pack to a quality standard
12 that significantly exceeds USDA minimum standards.

13 Q Thank you. As a member of the Commission, does
14 the Commission mandate or require any type of inspection in
15 industry?

16 A No, it does not.

17 Q Are there any other associations other than the
18 Dried Fruit Association that conducts the required mandated
19 inspections?

20 A No. The DFA or the Dried Fruit Association is
21 the designated authority to do the inspection and
22 certification.

23 Q Thank you. Can you explain the process in your
24 operation from the time you receive walnuts, to the time
25 that they are sold in regard to your internal quality

1 assurance?

2 A My internal quality assurance? Okay. Walnuts
3 are received during the harvest period. Generally
4 speaking, it's the second half of September through maybe
5 the first week of November. Walnuts of maybe 10 to 12
6 varieties are received. Eight-five percent of the total
7 volume is three varieties: the Chandler, the Howard, and
8 the Tulare varieties. The walnuts are received. During
9 the receiving process, a sample is pulled to make sure that
10 they have minimum standards to be received. Those minimum
11 standards are not to exceed eight percent moisture and they
12 must be free of debris and foreign material, which would be
13 something like a mixture of say almonds or some other
14 contaminant that might have been in the truck at the time.
15 If the product is in excess of that moisture level or has
16 contaminants, the product is quarantined here at the
17 facility and it goes through a special process. And upon
18 receipt, even though it's in quarantine, it does go through
19 fumigation to stabilize the product and make sure that we
20 don't have any infestation within the product. The goods
21 that pass the standard are warehoused and then they're
22 immediately fumigated. Again, they're fumigated for
23 insects to stabilize the product. And since the product is
24 below eight percent moisture, it's at a point of
25 equilibrium, equilibrium being the point with which the

1 product will store safely without degradation.

2 Once the product is received, it will go into
3 several different types of storage depending on the
4 product. It will go into a refrigerated storage under
5 certain conditions or go into a bulk storage or it will go
6 into a bin storage for smaller lots or smaller -- or, you
7 know, perhaps varieties that we don't have much of.

8 Once that product is warehoused and fumigated and
9 during the process of receiving the goods, a very intensive
10 sample is taken and that sample is used to determine the
11 value of the product to the producer. The walnuts are
12 tested for kernel content, edible kernel content, defect
13 levels, and for color. Again, the lighter the color, the
14 more value. And those different characteristics help
15 determine where in our facility that product is stored and
16 approximately when during the marketing year it will be
17 processed.

18 Once the product is in storage and we start the
19 processing operation. In this particular case I'll refer
20 to processing as the shelling of the product since that's
21 the most sophisticated of the processes. The product will
22 be taken to the sheller. It will be introduced to the
23 sheller. It will be shelled. At that point, we are going
24 to -- we're basically taking 97, 98 percent of the total
25 shell away from the nut, so we're approximately 98 percent

1 kernel and about 2 percent shell. And the shelling process
2 generates approximately six different particle sizes,
3 everything from about an eight-of-an-inch square, up to a
4 whole pristine half kernel. At that point, the kernels are
5 all mixed. The colors are all combined. When we refer to
6 colors, we're talking about three predominant colors: one
7 is light, one is light amber, and one is amber.

8 From the shelling process, the sized product is
9 taken to electronic processing, which uses either a laser
10 technology or high-speed camera technology to separate the
11 constituents. It will separate the product by color and it
12 will also -- the technology also allows us to separate the
13 shell and foreign material from the kernels.

14 Once this process is complete, the product is
15 taken onto the packing room where it's introduced to
16 sorting tables. Those sorting tables have individuals on
17 them that are performing essentially a QC function.
18 They're making sure that the mechanical process to clean
19 the walnuts was operational. And when I say that, I mean
20 the technology that we employ currently without the human
21 eye and human sorters can significantly clean the product
22 to levels much higher than USDA minimum standards. So
23 we're able to machine clean the product to significantly
24 higher than USDA minimum standards. These individuals on
25 the sorting table are merely there to make sure that there

1 wasn't some type of a mechanical malfunction in the
2 machines. If they were to find one, they would basically
3 shut down the line. The product that was packed prior to
4 that point would be quarantined for reprocessing and
5 basically taken out of the flow.

6 During this process, when the product goes over
7 the sorting lines, samples are automatically taken from the
8 processing line real time as we're packing. Those samples
9 are pulled and they're reviewed by our staff. We're
10 generally looking for defect levels and size variability
11 that might be outside the customer specification. So we
12 use a RO-TAP device that would size the kernels quickly and
13 it lets us know quickly and it let's us know if we're
14 within the size specification that the customer wants.
15 We're doing the visual analysis to make sure that the color
16 of the kernels is what the customer is buying per his
17 specification, his or her specification, and they're also
18 looking for any other issues that are required to be
19 determined during the inspection process.

20 After those processes are complete, the product
21 is -- either it goes back into a bin for movement to a
22 retail packing line or for a roasting process or some other
23 process that might be completed prior to the final
24 packaging of the goods. And in the case where it's going
25 directly to a customer that wants it in an industrial type

1 sized container, at that point I would repack to either in
2 a 25-pound carton, a 30-pound carton, or some type of a
3 shipping vessel that is required by the consumer or the
4 customer. And at that point, we would have certified that
5 the product met the specification prior to it leaving the
6 packing area. And if for any reason that it didn't, it
7 would be quarantined. The documentation would be completed
8 and the quarantine product would go back to the beginning
9 of the laser room and the product that passes would go on
10 to fumigation. We also fumigate the product after it's
11 packaged, but prior to the time that it goes into a retail
12 package. So we actually fumigate the goods twice. And
13 once that's done, then the product can go into the final
14 package and be shipped to the customer. That's basically
15 an outline of how the product would go through our
16 facility.

17 Q Thank you. Could you tell me what part of your
18 internal assurance process that you just described is
19 duplicative with the mandatory inspections under the
20 marketing order?

21 A That would be the process of determining the size
22 of the kernels. In other words, the DFA inspectors would
23 largely occupy an office right next to our QA office. They
24 would pull their own samples of the goods and they run
25 parallel inspections to those, to the extent that -- to the

1 limits of the USDA standards. We normally have two or
2 three different items that we would test for to a greater
3 degree than USDA would test. For instance, on sizing, the
4 USDA would -- has a relatively loose certification process
5 for pea sizes. Most of our customers have a much tighter
6 specification, so we would do a size spec analysis to a
7 much more stringent level. Other than that, the test that
8 DFA would do are largely just in parallel with ours. So,
9 basically, they're occupying really the same space and
10 doing -- about 80 percent of what they were doing was
11 identical to what we were doing.

12 Q Okay, thank you. So from what you just
13 described, it sounds as though DFA is conducting in-line
14 inspections; is that correct?

15 A They offer that as one of their inspection means,
16 yes. They will do what they call a floor inspection or an
17 in-line inspection. And the floor inspection is when they
18 inspect the goods after they've already been put in the
19 final container; an in-line inspection is one that is done
20 while the goods are being packed, where they basically take
21 custody of the goods by virtue of the fact that they
22 control the floor goods with their stamping process. For
23 the mandatory outbound inspection, no product can leave
24 this facility without a USDA stamp, you know,
25 certification, so that's how they control the goods prior

1 to them going into the final container.

2 Q Are both the in-line inspection and the lot
3 inspection meet the requirements of the marketing order?

4 A Yes, they do.

5 Q Okay. So do you conduct both within your
6 operation?

7 A We do. We only use the floor inspection for
8 special cases, maybe in certain circumstances, extremely
9 small runs and so forth. But I would say, you know, 98
10 percent of the volume that goes through our facility is
11 done on an in-line inspection basis, a lot more or less a
12 live basis.

13 Q Could you explain why you do more in-line rather
14 than the floor?

15 A Well, the volume we produce makes it almost
16 impossible for DFA to keep up on a floor inspection. A
17 floor inspection is basically an inspection where the
18 inspector would walk up to a pallet of material, of goods,
19 generally they're packed in a 25- or 30-pound carton, and
20 they will make a random selection of the cartons that they
21 want to look at to pull samples from. The volume that we
22 run through this facility, it's just not practical to do
23 that on a floor inspection basis. Ours is a relatively
24 high volume facility and it's just much more practical to
25 do it real time. It's much easier for the inspectors.

1 They can pull a lot more samples, you know, per load. It's
2 just, it's a labor saver.

3 Q Is it more cost efficient for your operation as
4 well?

5 A Much more cost efficient.

6 Q Thank you. So DFA offers either one of these
7 inspections depending -- it's up to the discretion of the
8 processor, is that correct?

9 A That's correct. Normally the smaller volume
10 operations would do a floor inspection. It's just easier
11 for them. The DFA inspector does not have to be there when
12 they're running. The DFA inspector can come in, inspect
13 the goods, and then they would stamp the cartons with the
14 identifying certification marks prior to the product being
15 put into commerce. In our particular case, the DFA works
16 on an in-line basis, so they're pulling samples before the
17 product goes into the final carton. However, they have a
18 printing apparatus that goes on our packing lines and the
19 certification is put on automatically, so the DFA inspector
20 does not have to put it on. So they will come in and they
21 have the keys to the locks -- it's basically locked up and
22 once they come in to work, they would unlock the system.
23 We would pack. If they reject product, we put in their
24 quarantine and the boxes have to be emptied each day if we
25 have anything that fails to meet certification. And it's

1 just a labor saver.

2 Q Could you tell me in your operation how often the
3 DFA finds defective walnuts on rolls that are defective
4 and, if they do, what is the process?

5 A I would say, you know, they might have -- they
6 might find something two or three times a year, which if I
7 put that into perspective for you, a sampling would be
8 about one-thousand pounds, so they might find excessive
9 defect in perhaps 3,000 pounds a year, which would be, you
10 know, just fractions of a percent. I mean, it's really
11 insignificant. And so what they would do is they basically
12 have a quarantine area within our facility and so depending
13 on what the defect is, we would dump the product and re -
14 process it. And, you know, those boxes would either be
15 destroyed, you know, and basically they'd be refilled. The
16 processing wouldn't necessarily be completed on those
17 goods. The reprocessing wouldn't necessarily be completed
18 the same day. They would just go back into inventory. And
19 the potential -- what they would normally reject for would
20 not be a foreign material issue. It would likely be a
21 discussion over the percentage of halves or, you know, some
22 type of a size deviation that they might perceive to be out
23 of spec. So we would go back and repack those goods and
24 that would be the process.

25 Q Okay, thank you. So the name of your operation

1 is Crain Shelling, is that correct?

2 A It's actually Crain Walnut Shelling.

3 Q Crain Walnut Shelling?

4 A Yes. I apologize for that.

5 Q That's okay. So do you handle both in-shell and
6 shell?

7 A Yes, we do.

8 Q Okay. So the process you described earlier
9 sounded as though that was primarily for shelled product.

10 A That is correct. That was the flow of the
11 product through our facility if it was to be shelled.

12 Q Okay. Is the flow of the product for in-shell
13 shorter? How does it differ?

14 A It's much shorter. It's a much simpler process.
15 If you want me to critique the flow, I can do that.

16 Q Please?

17 A Okay. Upon the point of receipt -- we have
18 basically two facilities. We have an inshell facility and
19 we have a shelling facility. Upon receipt of the goods, we
20 determine the highest and best use, using that incoming
21 sample mechanism that I was telling you about, one that
22 confirms the moisture and the suitability of the product to
23 be received, in other words the fact that it must not
24 contain any contaminants or possible allergens.

25 So during that process, we do a quick screening

1 for size and internal quality. And if it meets certain
2 size components and internal quality components, the load
3 would be diverted to the inshell facility. To give you a
4 little bit of an idea of why that would be, generally,
5 inshell buyers prefer the largest sizes of walnuts.
6 They're wanting to buy the jumbo fruit generally.
7 Approximately 90 percent of California's inshell walnuts
8 are exported and those are all normally -- most of those
9 are jumbo in size. So we would high grade the loads coming
10 in for that attribute and we would direct those to the
11 inshell facility.

12 Once the product is earmarked for the inshell
13 facility, it basically takes on the same standards or same
14 processes regarding fumigation that would for kernels. The
15 product would go into buildings to be fumigated. The
16 process only takes about 24 hours. Once the product is
17 fumigated, it will be sized. So even though the product is
18 principally of jumbo size, there will be mixed sizes in the
19 incoming product. Those sizes will be separated and then
20 the product will go on to -- for processing, which is
21 basically sorting the product to make sure the shell is not
22 broken, making sure there are no blemishes on the shell
23 such as stains, adhering hole, or potentially discoloration
24 of the outer shell. That's all sorted electronically and
25 some of it's done by hand as well.

1 And then once that product is sorted, it's bagged
2 into varied size bags, everything from a consumer pack,
3 normally one pound. We do a 1kg and then we do a 10kg and
4 we do a 50 pound and 25kg bags. That products is inspected
5 by our QA staff to meet the customer's standards. And once
6 it is, then it is shipped.

7 Under the scenario where we're using a mandatory
8 outbound inspection, DFA is providing a parallel analysis
9 of the quality. We would have inspectors in the facility.
10 Again, due to the volumes running through the facility, it
11 would be a in-line process and they would basically be
12 making sure that the product is marked jumbo, actually
13 meets jumbo standards, much like what we're doing. But the
14 amount of testing that is done on inshell is not near as
15 significant as it is for kernels.

16 Q Okay. And would you say the inspection that's
17 being conducted by DFA on the shelled and inshell compared
18 to the quality assurance inspection that's being performed
19 by your staff and your operation is more or less stringent?

20 A Our own internal standards are much more
21 stringent than those of DFA. To put it in perspective for
22 you, the inshell plant will run all year long and never
23 have a rejection by USDA. Inshell standards are fairly
24 simple. Our standards are higher. Basically, we looked at
25 DFA as only a body necessary to do the counting to

1 determine what the assessments were. It did not have any
2 economic value for us. We never had product that came
3 close to meeting USDA standards and it was simply just --
4 you know, it was just duplicating what we're doing, but to
5 a lower quality standard.

6 Q Thank you. So I have some questions about
7 sections 984.51 and sections 984.52. In 984.51, inspection
8 and certification of inshell and shelled walnuts, it states
9 that walnuts either inshell and shelled before put into
10 commerce must be inspected; correct?

11 A That is correct.

12 Q There's also a provision here that discusses
13 walnuts that are in storage for a longer length of time as
14 determined by the Board, would also need to be inspected to
15 determine if there's any cause of deterioration of those
16 walnuts. Is that something that you perform in your
17 operation, a reinspection of product?

18 A For the inshell walnuts, no, we do not. If the
19 inshell walnuts do not meet our internal quality standards,
20 they are shipped to the shelling operation --

21 Q Okay.

22 A -- and they're reduced to kernels.

23 Q Okay. Would you say some handlers in the
24 industry -- I think from previous testimony that there are
25 times when walnuts are carried over from the previous crop

1 year and sold into the upcoming marketable year, fiscal
2 year. Would you say --

3 A Yes, I know --

4 Q I'm sorry, would you say some handlers do get
5 their product reinspected?

6 A Yes. It's a requirement under certain conditions
7 to have product that has been previously inspected to be
8 reinspected. Generally speaking, as I can remember, 90
9 percent of inshell walnuts are shipped overseas. The
10 countries that those walnuts are going to have what we call
11 phytosanitary treaties with the U.S. and that means they
12 must meet certain phytosanitary standards. One of the
13 criteria to meet generally all phytosanitary standards is
14 that the products must be inspected within 30 days of
15 shipment from the U.S. So in the case where product has
16 been certified as merchantable, but not shipped within 30
17 days, that would require a reinspection.

18 Q And who has to perform that inspection?

19 A That inspection currently is performed by DFA.

20 Q And that is a requirement of the phytosanitary
21 measures in place by foreign countries, is that correct?

22 A Yes, that's correct. It does not have to be DFA
23 certifying the product. It just has to be reinspected.

24 Q So with the elimination of inspections under the
25 marketing order, that inspection would still remain in

1 place?

2 A DFA would not have to provide any inspections or
3 reinspections for the purposes of meeting the phytosanitary
4 treaties.

5 Q With the elimination of the inspections under the
6 marketing order?

7 A Yes. If the inspection criteria was eliminated,
8 that would not create any negative impacts on the industry.

9 Q Okay. Section 984.52 discusses processing of
10 shelled walnuts. It states that walnuts that are shelled
11 before a handler can slice, chop, or grind them, they have
12 to certified, inspected and certified to meet the quality
13 regulations; is that correct?

14 A That is correct.

15 Q Okay. Can you explain, so shelled walnuts that
16 are shelled, before you chop them to I guess the value
17 added that was discussed before, they have to be inspected
18 prior to that?

19 A That is correct. Under the marketing order as it
20 currently stands, that is correct.

21 Q And then is there another inspection that takes
22 place for the outbound before it's sold or does that comply
23 with the outbound inspection?

24 A No, it would have to be reinspected for outbound.

25 Q Okay. So for walnuts, for shelled walnuts that

1 are processed, there are actually two mandated inspections?

2 A If they're going to be manufactured or if the
3 shape of the walnut is going to be changed mechanically, it
4 has to be inspected prior to that process to make sure that
5 it doesn't contain excessive shell, foreign material,
6 filth, or substandard or, you know, non-merchantable
7 product.

8 Q Okay. And is that an inspection that you
9 currently perform in your operation?

10 A Yes, it is.

11 Q And according to the quality assurance process
12 that you described earlier for shelled product, you have
13 mechanisms in place that would ensure the quality of
14 shelled product for processing if the inspections were
15 eliminated from the marketing order?

16 A Yes, we do. Since about 2005, we've been able to
17 do that mechanically. In other words, our equipment can
18 sort to the degree to where it meets that standard easily.

19 Q Okay, thank you. You mentioned in your quality
20 assurance process using laser technology and high-speed
21 belts, I think, for inshell quality assurance. Would you
22 say laser technology and the high-speed mechanism is
23 standard in industry for handlers that handle in- shell --
24 I mean, shelled, I'm sorry?

25 A Yes. The technology is -- there are two types:

1 one is about using lasers; the other one is high-speed
2 camera technology. And both those technologies have been
3 out -- laser has been -- was originally introduced in 1993,
4 cameras were introduced in about 1995, and they are
5 continually being improved by competing manufacturers and
6 those are basically installed in virtually every processor,
7 you know, of any consequence in California. You know,
8 there are some exceptions for product that requires
9 inspection, such that was discussed in earlier testimony.
10 Those are, you know, growers selling their own product, you
11 know, product not over, you know, 500 pounds and those type
12 of things. Well, certainly, some of those products would
13 not go through that technology. But, certainly, people
14 that are introducing -- processors that are introducing
15 product into commerce are using that technology to achieve
16 today's standards.

17 Q Okay, thank you. So to clarify, that initial
18 sampling when you receive walnuts, is that the inbound
19 inspection?

20 A No, it is not. The inbound inspection is done --
21 okay, let me just backtrack a little bit, okay. There's an
22 inspection that is done prior to receiving the product,
23 okay. Receiving the product is a step that we refer to as
24 the trucks moving across a certified scale to be weighed.
25 Prior to them being received by us and accepted by us, they

1 must meet the moisture standard and an inspection for filt
2 and contaminants. If they don't, they're not -- they're
3 rejected at that point and go through a different process.
4 If the product meets the eight percent moisture threshold
5 and the filt and contaminant inspection is then weighed.
6 The truck would be weighed. The California Weigh Master
7 Certificate would be issued and that would weigh the vessel
8 that the product is coming in on, plus the product.

9 The truck will then go from there to one of three
10 receiving areas and they'll either go into a cold storage
11 bulk cold storage facility, a bulk ambient storage
12 facility, or a facility where the product is held in one-
13 ton bins. The product would be unloaded into those
14 facilities and as the product is offloaded, a sample is
15 pulled. And that is the inbound sample and that's the one
16 that determines the value of the goods.

17 When the vessel is loaded, we can't get a good
18 cross section -- let's put it this way, we can't get as
19 good of a sampling from the top of the truck, as we can
20 when we're receiving the goods. So to make sure that we're
21 getting the best possible results for the grower's
22 calculations, that sample is taken during the unloading
23 process and it's pulled randomly throughout the load that
24 comes in. Most loads that enter the facility are
25 approximately 50,000 pounds or 25 tons.

1 Q Okay. So that entire process you just described
2 is the inbound inspection?

3 A That's correct.

4 Q Okay. Would you say that the process, the
5 inbound inspection that you just described is standard
6 across industry?

7 A I would, yes. Some of them have a third-party
8 inspection and others do it themselves or in-house, but the
9 items being sampled are the same.

10 Q Okay, thank you. And during that inbound
11 inspection, you say that you're testing for moisture and
12 contaminants. What are those standards based on?

13 A Excessive moisture is a situation where product
14 was not completely dried at the huller and dryer to a point
15 of what we call equilibrium, equilibrium being the point
16 with which walnuts can be put into storage and stored for a
17 long period of time without degradation. If the walnuts
18 aren't dried to approximately eight percent, there's
19 excessive moisture and that causes the walnuts to develop a
20 stronger flavor and it causes them -- it shortens the shelf
21 life of the product. So that's why we perform that test.

22 Q Is that 8 percent moisture control something that
23 was developed by research or scientific research? Or what
24 is the basis for that, do you know?

25 A The basis of equilibrium is a function of

1 research that was done at the University of California,
2 Davis by a Dr. Thompson. He determined that 6.7 percent
3 was true equilibrium. And over time, we have determined
4 that when walnuts are hulled and dried and shipped to our
5 facility, that, you know, there's a certain moisture lost
6 in product as it cools. And so as it comes out the dryer,
7 it's normally a warm, relatively warm product and we've
8 determined over time statistically that if the product
9 comes into our facility during a harvest at eight percent,
10 that we can achieve equilibrium. In other words, it will
11 continue to -- the moisture will continue to drop a little
12 bit. And so those are the standards that we use.

13 Q Thank you. And would you say the research that's
14 conducted at the University of Davis in regards to the
15 increases in quality and better maintenance of walnuts is
16 available throughout all of industry?

17 A The research that is being done at Davis and
18 other universities is normally -- the engagement is
19 normally done by the California Walnut Board and the cost
20 of doing that are normally reviewed with the Grades and
21 Standards Committee. The Grades and Standards Committee
22 would normally look at projects and budgets. Normally, the
23 professors from Davis that are entertaining doing the
24 research for the Board would come in and make a
25 presentation to the Grades and Standards Committee with a

1 proposed budget. And we would then -- normally, in the
2 spring of the year, we'll look at all the projects for the
3 year to develop our budget. We'll select the ones that we
4 think have a good return for the industry and then we'll
5 make recommendations to the full Board for acceptance. So
6 the individual processors do not have to engage the
7 services of Davis, of the University individually. They
8 certainly can, if they want, but the Board basically is
9 paying for those services and those projects to be
10 completed.

11 MS. KATHIR: Your Honor, this is Pushpa Kathir.
12 There's a raised hand carrier.

13 MR. CARRIERE: Yes, Your Honor, may I object?

14 CHIEF JUDGE STROTHER: Yes.

15 MR. CARRIERE: I object to this whole discussion
16 about incoming inspections. This has nothing to do with
17 the order or the revisions we're making and I think it's
18 confusing in that Mr. Crain is correct that there's
19 incoming inspections and we all do this, but they're his
20 own people and you can have DFA do it, but it's not a
21 mandatory inspection and it's not going to be eliminated or
22 enforced either way.

23 Secondly, there was a little bit of confusion, I
24 believe, on the chopping issue. When you take walnuts and
25 you chop them, you have to inspect them prior to chopping

1 or prior to processing and then they pass. And then maybe
2 Mr. Crain's operation, they inspect them on their own after
3 they're chopped, but they're not required to be inspected
4 after chopping. For example, meal can't be tested for
5 foreign material. It's too small. We actually did some
6 formal rulemaking in the past on this point to allow this
7 to happen, to allow chopped walnuts to be inspected prior
8 to chopping, so that we could sell them. Otherwise, if you
9 chopped walnuts without inspecting them and then you had
10 meal, you couldn't sell it because you couldn't certify it,
11 so it had to go to oil stock.

12 So I think it's very confusing. And no offense
13 to the questions, but we're specifically talking about
14 outgoing -- eliminating outgoing inspections of prior to
15 chopping product or finished packed product and not
16 incoming product. And maybe somebody can correct me if I'm
17 wrong, but I believe this has no relevance to the question
18 at hand and I don't want to confuse the situation and have
19 it be put in the report that, you know, we're eliminating
20 incoming inspections because we're not. They're not
21 required now.

22 CHIEF JUDGE STROTHER: Ms. Pankey, do you have a
23 response to that objection?

24 MS. PANKEY: Yes. We're not talking about the
25 elimination of incoming inspections. We're talking about

1 the duplicative inspections that are being conducted in the
2 industry, that are also being conducted -- that are also
3 mandated by the marketing order.

4 MR. CARRIERE: But incoming inspections are not
5 mandated by the marketing order. So why do --

6 MS. PANKEY: No, they're not. They're not --

7 MR. CARRIERE: Why would you --

8 MS. PANKEY: -- mandated by the -- sorry.

9 CHIEF JUDGE STROTHER: Hello, address each other
10 --

11 MR. CARRIERE: Sorry.

12 CHIEF JUDGE STROTHER: -- through me.

13 MR. CARRIERE: Sorry, Your Honor. The incoming
14 inspections are not mandated by the marketing order, so I
15 don't see how they're relevant to this discussion other
16 than cursory describe the whole process, that's fine. I
17 think it's adding confusion is my point.

18 CHIEF JUDGE STROTHER: Well, we can -- you know,
19 we can straighten out any confusion, I think, in the
20 testimony that's coming up on that. Back to you, Ms.
21 Pankey. I guess I'm -- I guess confused isn't the right
22 word, but I suppose any inspection might enhance whether
23 something is being inspected or not. Is that your point,
24 Ms. Pankey? I mean there's a lot of inspection going on, I
25 guess, but whether it's required or not, you know, I'm not

1 sure of the ultimate relevance of that. Is there a
2 contention that this pre-chopping inspection alleviates the
3 need for the inspection that is at issue in this hearing?

4 MS. CHILUKURI: Your Honor, if I could interject?
5 This is Rupa Chilukuri for USDA.

6 CHIEF JUDGE STROTHER: Yes.

7 MS. CHILUKURI: So AMS is tasked with writing
8 your recommended decision, so they need to understand in
9 part what is happening in the industry currently and that
10 is not clear at the outset to all of us. So I've
11 personally found this to be helpful in hearing what Mr.
12 Crain has going on in his operations. I haven't found it
13 confusing in the sense that there's an incoming inspection,
14 I don't know. It's clear it's not mandated, but having
15 that additional background is useful for AMS as they draft
16 the recommended decision. So I just wanted to make that
17 clear from the outset, to understand what is currently in
18 place and what could change in the future. And we're not -
19 - Ms. Pankey, in asking questions, is not trying to say
20 that Mr. Crain or anybody else's operation will change as
21 to the incoming operation, but clearly something will
22 change as to the outgoing inspection.

23 CHIEF JUDGE STROTHER: Does that satisfy the
24 objection? I think it's a matter of clarity. We can fix
25 clarity. I mean, do we have other witnesses --

1 MR. CARRIERE: Yes, Your Honor, thank you.

2 CHIEF JUDGE STROTHER: -- that may appear on
3 that? I think you, yourself, indicated that, you know,
4 that if this is coming in by way of background, that you
5 were okay with that. I'm not sure anyone has made a
6 particular contention as to what the relevance of this is
7 other than by way of background. But USDA contends that
8 knowing what all goes on, including these other types of
9 inspection, are important to their understanding of the
10 process. Did I frame that right, Counsel? Ms. Chilukuri?

11 MS. CHILUKURI: Yes, Your Honor. And I would
12 also say that this isn't outside of the scope of the Notice
13 of Hearing. So we are talking about inspection
14 certification, so, obviously, as it relates to the
15 marketing order, that's outgoing, but there is a process.
16 So this background material is useful. We can cut it
17 short. We can proceed. We can decide to not -- you know,
18 to move on, but I would say that I don't think it has been,
19 you know, not a useful endeavor.

20 CHIEF JUDGE STROTHER: Right, no, and I'm not --
21 I'm not going to cut it off either. I mean, we've got into
22 it quite a bit. I mean, I am concerned that we got an
23 objection that cites -- that indicates that things are not
24 clear and let's make sure that we get that cleared up. But
25 it does seem to me generally relevant to the rulemaking, so

1 objection overruled. You may continue, Ms. Pankey.

2 MS. PANKEY: Thank you, Your Honor.

3 BY MS. PANKEY:

4 Q Mr. Crain --

5 CHIEF JUDGE STROTHER: Actually, let me ask while
6 we have a little break here. We've got to move cars over
7 here to keep from getting locked into the parking garages.
8 I don't think we're going to finish this witness before
9 6:00 our time here, so I think it would be good if we took
10 a break here and let us handle some administrative issues
11 within our office and come back at 6:00. Does that suit
12 everyone? I hate to stop examination, particularly -- you
13 know, a particular examiner, but even as to a particular
14 witness, but I think in this case we have exigent
15 circumstances that need to be addressed right now. Any
16 objection?

17 (No response.)

18 CHIEF JUDGE STROTHER: Then we'll come back to
19 you, Ms. Pankey, at 6:00 eastern time, 3:00 western time,
20 and I appreciate everyone's indulgence in this. See you in
21 15 minutes, 6:00. Thank you.

22 (Whereupon, a brief recess was taken.)

23 CHIEF JUDGE STROTHER: Can folks hear me?

24 MR. HATCH: Yes, we can.

25 CHIEF JUDGE STROTHER: Good, thank you, Mr.

1 Hatch. Got a lot of mute buttons and things going on here.
2 All right. So right before our little break there --thanks
3 for everyone's indulgence on that -- we have -- I overruled
4 an objection about whether -- that the relevance of certain
5 types of inspections to this. Mr. Crain, I take it you're
6 back and ready to resume the stand. I remind you that
7 you're still under oath. I guess I should say, anyone who
8 wants to submit testimony, get your request in to Lashawn
9 Williams or Andy -- Andrew Hatch at this point, I guess,
10 Mr. Hatch, if I remember. Ms. Pankey, you are on mute
11 right now, but it's your witness again.

12 MS. PANKEY: Thank you, Your Honor. Thank you,
13 Mr. Crain. I'll pick up where I left off.

14 BY MS. PANKEY:

15 Q So could you tell me as a member of the Grades
16 and Standards Committee if there were any additional
17 associated challenges that were discussed in regards with -
18 - in regards to the outbound inspection mandated under the
19 marketing order?

20 A None other than those that we've already
21 discussed.

22 Q Okay, thank you. In your opinion, do you think
23 the implementation of the inspection of the moratorium on
24 inspection has adversely affected the quality of walnuts?

25 A No, I don't believe it has adversely affected the

1 quality.

2 Q Have the current procedures to determine quality
3 within your operation changed under the moratorium?

4 A No, they have not.

5 Q Did the Board consider how the elimination of
6 inspection affects imported walnuts?

7 A That was taken under consideration during
8 discussion.

9 Q Taken out of consideration?

10 A That was considered and that's one of the reasons
11 -- you know, we understood during the discussions with USDA
12 that there was a requirement for parity or equality on
13 inspections, you know, relative to imports. And under one
14 of the criteria that was discussed, it would have created a
15 double standard and so it was our -- we endeavored
16 basically to circumvent that and the belief is that
17 imported walnuts should remain -- you know, should require
18 the need for inspection.

19 Q Thank you. Could you please explain how the
20 proposed assessment mechanism would provide additional
21 efficiency to handlers?

22 A The efficiency to handlers would basically come
23 from limiting the duplicity of inspection and the number of
24 people in our facility that are required to inspect and
25 certify a product.

1 Q Thank you. You mentioned efficiency gains to
2 industry because of the proposed rule. In what way as a
3 large handler are you more efficient as a result of the
4 proposal?

5 A Most of our efficiency is economic, so I would
6 say the economic efficiencies are that of not having to
7 duplicate the process and being able to pass that cost
8 savings on to growers.

9 Q Thank you. Can you explain how a reduced burden
10 and estimate cost saving of approximately six million for
11 handlers also benefits producers and consumers?

12 A It's going to benefit producers and consumers
13 through our lower cost of operations. Obviously, our costs
14 at the end of the day are needing to be passed on.
15 Otherwise, you know, we're not operating sustainably and
16 necessarily competitive in the marketplace. By reducing
17 our costs, we're basically able to reduce our cost -- the
18 cost of our finished product.

19 Q Thank you. So would the benefits be experienced
20 by handlers immediately or over time?

21 A Immediately.

22 MS. PANKEY: Thank you, Mr. Crain. Your Honor, I
23 have no further questions.

24 CHIEF JUDGE STROTHER: Okay. Any further
25 questions from anyone else at USDA for Mr. Crain?

1 MS. CHILUKURI: Yes, Your Honor. This is Rupa
2 Chilukuri. I'm sorry, I heard someone else.

3 MR. HATCH: Go ahead, Rupa.

4 CHIEF JUDGE STROTHER: Okay. You first, Counsel.
5 It's your witness.

6 MS. CHILUKURI: Thank you.

7 BY MS. CHILUKURI:

8 Q Mr. Crain, I just had one question for you. I
9 just wanted to understand your understanding of if this
10 proposal is effectuated regarding removal of mandatory
11 inspections and removal of grade and quality standards,
12 what is your understanding as it relates to imports -- the
13 effect of inspections and quality standards for imports,
14 what is your understanding as it relates to that?

15 A So during discussion, the many discussions that
16 took place since the fall of 2020, we tried to find a path
17 that allowed for processors here in California to reduce
18 our cost and avoid the duplicity that was occurring in the
19 inspection that was required by virtue of the fact that our
20 buyers are demanding a standard that significantly exceeds
21 USDA minimum standards and they were requiring that we
22 certify internally that the product met their criteria.
23 That required us to have our own internal QA team, QC team
24 doing inspections. So basically we wanted to avoid that
25 duplicity. It didn't make sense at that point once we had

1 built up these facilities and individuals to, you know,
2 basically do it twice. So we looked for a way to maintain
3 the order and not have to go through any type of rulemaking
4 revision, which would require us to go through this
5 process. But we weren't able to develop a clear path to do
6 that, so we're in this process. And one of the items that
7 was discussed during the discussions was, you know, the
8 effects of the perception of us holding a foreign producer
9 of product or an exporter to the U.S. to a different
10 standard than what is required internally. And so that was
11 one of the considerations that was discussed during our
12 process.

13 You know, I think everybody is in agreement that,
14 you know, that was one of the criteria that we wanted to
15 consider. But at the end of the day, it came down to just
16 the sheer economics and the reality that the standards were
17 obsolete, the current standards are obsolete and that we
18 already had certification processes in place that, you
19 know, exceeded those standards.

20 MS. CHILUKURI: Thank you, Mr. Crain. I have no
21 further questions.

22 CHIEF JUDGE STROTHER: Okay. Mr. Hatch, were you
23 indicating you had questions?

24 MR. HATCH: Yes, sir, thank you very much.

25 CHIEF JUDGE STROTHER: Your witness.

1 MR. HATCH: Thank you.

2 BY MR. HATCH:

3 Q Mr. Crain, at the end of your testimony, you
4 indicated reduced burden on handlers is anticipated to
5 benefit the producer through higher grower returns
6 resulting from decreased costs. And a moment ago you
7 expanded on that, saying that benefit to producers through
8 lower cost of production and decreased finished product,
9 increased cost of finished product. But you also mentioned
10 the phrase "pass on." Could you please expand on how those
11 benefits or costs will be passed on to the producer?

12 A The costs that are created during the processing
13 and packaging and preparation of the goods for commerce, at
14 the end of the day, those costs come out of the pie, which
15 also includes the grower return and the grower return is
16 the biggest single constituents in that pie. So as you
17 reduce the burden on the handler and its costs and you're
18 basically leaving a little bit bigger piece of the pie that
19 can be distributed to the producer.

20 MR. HATCH: Okay, thank you very much. No
21 further questions.

22 CHIEF JUDGE STROTHER: Okay. That it for USDA
23 for questioners?

24 (No response.)

25 CHIEF JUDGE STROTHER: Okay. Next, anyone from

1 the -- I had to adopt a standard terminology here. The
2 participants that are participating via Zoom, anyone have
3 any questions for this witness, for Mr. Crain, from that?

4 (No response.)

5 CHIEF JUDGE STROTHER: Okay. Hearing none, any
6 of the participants that are participating via telephone?

7 (No response.)

8 CHIEF JUDGE STROTHER: Okay. Anyone from the
9 California Walnut Board have any questioning in the nature
10 of redirect for this witness, Mr. Crain?

11 MS. DONOHO: I do not. We do not.

12 CHIEF JUDGE STROTHER: Very well, thank you.
13 Hearing no others, okay, Mr. Crain had one exhibit, which
14 was his testimony and that's Exhibit 13. Any objections to
15 the entering of Exhibit 13 into the record?

16 (No response.)

17 CHIEF JUDGE STROTHER: Hearing none, Exhibit 13
18 is made a part of this record.

19 (The document referred to was
20 marked for identification as
21 Exhibit 13 and was received
22 in evidence.)

23 CHIEF JUDGE STROTHER: Mr. Crain, thank you for
24 your testimony. You may symbolically step down.

25 (Witness excused.)

1 CHIEF JUDGE STROTHER: I have the next witness of
2 William Carriere. Am I pronouncing it correctly?

3 MR. CARRIERE: Carriere.

4 CHIEF JUDGE STROTHER: Carriere, okay. I
5 actually looked up on YouTube various pronunciations.

6 MR. CARRIERE: We don't say the French version
7 anymore.

8 CHIEF JUDGE STROTHER: You don't pronounce it
9 quite like the town in Mississippi either apparently.

10 MR. CARRIERE: No, no.

11 CHIEF JUDGE STROTHER: Okay, thank you. I'll do
12 the best I can with it. I'll swear you in.

13 Whereupon,

14 WILLIAM CARRIERE

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

17 CHIEF JUDGE STROTHER: Okay. Anyone from the
18 California Walnut Board want to do anything with this
19 California Walnut Board witness or should we just have the
20 witness present his statement?

21 MS. DONOHO: He can just present his statement.
22 Thank you.

23 CHIEF JUDGE STROTHER: Very well.

24 MR. CARRIERE: All right, thank you. Good
25 afternoon. My name is William or Bill Carriere, William,

1 W-I-L-L-I-A-M, Carriere, C-A-R-R-I-E-R-E. Address is 1640
2 State Highway 45 in Glenn, California 95943. I'm the
3 President and CEO of Carriere Family Farms. We're a
4 diversified family farming and walnut handling operation.
5 Carriere Family Farms is an LLC family partnership between
6 myself and counting our spouses another 21 family members,
7 made up of third, fourth, and fifth generation California
8 farmers. And although we have big plans to grow, I'm
9 testifying today as a small handler. I serve on the
10 California Walnut Board in the capacity of member and sit
11 on the Executive Committee and Market Development
12 Committee, Market Order Provision Committee, and Grades and
13 Standards Committees.

14 Today, I'd like to discuss several justification
15 points regarding the proposal to revise quality control and
16 inspection. I'll be addressing sections 984.69 and
17 984.347, as published in the Notice of Hearing. For the
18 purpose of the proposal recommended by the California
19 Walnut Board, is to amend the federal marketing order 984
20 to change the mechanism for assessments, which is section
21 984.69, and if implemented, the proposal would prescribe a
22 new method of assessment and initial assessment rate
23 necessitated by changes in the assessment regulations,
24 which is section 984.347. The problem to be addressed is
25 that the order language ties the collection assessments to

1 certification of inspection. The proposed changes to
2 sections 984.50, 984.51, 984.52 remove inspection
3 certification requirements from the order.

4 The inspection certification was used by the
5 Board to calculate assessments for all handlers. With
6 removal of the inspection certification requirement, the
7 new method to allow the Board to calculate assessments for
8 all handlers must be established. The amendment would
9 modify the language of section 984.69 to (a) remove kernel
10 weight; (b) establish an initial assessment rate; and (c)
11 add authority to charge interest and late payment charges,
12 as prescribed by the Board with approval from the
13 Secretary. There would be a conforming change to the
14 regulation section 984.347 to modify the measurement of
15 weight for the assessment calculation.

16 In regard to section 984.69(a), the kernel weight
17 will no longer apply, as the new assessment mechanism would
18 be based on product received by handlers and reported in
19 inshell pounds. All handlers already provide this
20 information handily on an existing California Walnut Board
21 form. This form, the California Walnut Board Crop
22 Acquisition Report, or CWB Form 1, is required under the
23 existing provisions of the order. California Walnut Board
24 Form 1 provides the information necessary for the Board to
25 calculate the assessment. Thus, this change is equitable,

1 neutral, and does not -- doesn't add any administrative
2 burden to handlers.

3 Section 984.69(b) establishes an initial
4 assessment rate of 0.0125 or one-and-a-quarter cents. The
5 establishment of a rate enables the California Walnut Board
6 to collect assessments upon publication of the final rule
7 in the year in which they apply. The initial rate was
8 discussed and recommended by the Rulemaking Committee and
9 the full Board. The Committee had a robust discussion
10 regarding various rates that would be the most reasonable,
11 as to not appear as though years without assessments would
12 try to be recaptured. The rates selected is lower than the
13 rate that was initially proposed for the 2021-22 season and
14 lower than the rates for four of the last five years prior
15 to 2021-22. The rate allows industry to sustain
16 commitments for its mission to build demand and fund
17 research programs that enable industry to maintain its
18 competitiveness from production to market. Further, the
19 determination of the initial rate in no way supercedes the
20 Board's normal process during which the Board meets to
21 establish a budget.

22 The rulemaking process is an 18- to 24-month
23 process. During such time, the Board is unable to collect
24 assessments. Having the ability to assess upon
25 implementation is important for the industry to be able to

1 resume its full scope of activities, as the Board is
2 currently operating on reserves in the interim. Given that
3 the timeline is fluid, the Board needs the ability to
4 implement upon publication if they choose to even if that
5 may be during the middle of a crop year. The Committee and
6 the Board discussed and voted in favor of a new assessment
7 mechanism. The goal is to be equitable and not increase
8 handler burden.

9 Currently, all handlers are required to report
10 crop acquisitions or receipts on the CWB Form 1 by January
11 15th of the marketing year. This report shows total
12 handler reported receipts by county and variety and will be
13 the basis for the application of the rate to be paid in
14 three payments through the remainder of the year. The
15 group reviewed the flow of billings under the old mechanism
16 to determine what would be feasible, equitable, and not put
17 undue burden on handlers to pay. Invoicing under the new
18 post system will not begin until after the CWB Form 1 is
19 due and would stagger the billings later in the year to
20 allow handlers to pay in three installments versus the
21 prior system in which typically occurred monthly under the
22 inspection certification mechanism. Billings would be
23 generated in January, April, and July, as prescribed by the
24 Board, with payments due in February, May, and August.

25 In regard to item 984.69(c), additional language

1 has been added to allow for the Board to apply interest and
2 late payment charges. These rates would be defined in the
3 regulations in accordance with the establishment of the
4 budget or assessment rate.

5 The intent of the proposal is to encourage
6 compliance through this common business practice. The
7 Board included in this language in order to strengthen our
8 ability to ensure handler compliance. While it's our hope
9 that we do not have to use this remedy to ensure
10 compliance, it is a deterrent for noncompliance. These
11 fees would apply equally across the handler base as
12 incurred. If implemented, the proposal will enable the
13 California Walnut Board to streamline the authority,
14 thereby allowing any future changes via regulation. I
15 support the changes therein.

16 Regarding the change of definition to handle, my
17 colleague will be testifying. However, in order to
18 implement the new method, receipt must be added to the
19 scope fo the definition to enable the industry to use Form
20 1, which is the crop acquisition report as the basis for
21 assessment. That concludes my testimony.

22 CHIEF JUDGE STROTHER: Okay. Does the California
23 Walnut Board have any questions on direct for its witness?

24 (No response.)

25 CHIEF JUDGE STROTHER: Hearing none, anyone from

1 USDA have questions for this witness?

2 MR. QUINONES: Yes, Your Honor. This is Geronimo
3 Quinones and I have some questions for Mr. Carriere.

4 CHIEF JUDGE STROTHER: Your witness.

5 CROSS-EXAMINATION

6 BY MR. QUINONES:

7 Q Good afternoon, Mr. Carriere. Could you explain
8 what your roles are on the several different committees
9 that you serve on?

10 A I'm currently Chairman of the Executive
11 Committee. I'm just a member of the other committees. Is
12 that what you mean?

13 Q Yes, sir. In your opinion, would you say those
14 committee meetings and discussions are representative of
15 all handlers of different sizes?

16 A Yes, I would. And in addition, these meetings
17 are open to anyone who wants to come in. So we often have,
18 unless we go into closed session, for example, we often
19 have non-committee members, just other industry members
20 present at a lot of these meetings.

21 Q You said you were testifying today as a small
22 handler. Could you explain, if any, what are the
23 differences in processing a walnut for a smaller handler
24 compared for a large handler?

25 A Well, it's basically based on volume. I guess we

1 can be a little more nimble. We have some advantages and
2 disadvantages. Obviously, there's some advantages of being
3 large just with economies of scale. But, for example, as
4 Mr. Crain testified to, if we wanted to do an inspection,
5 we utilize the floor inspections more often than in-line
6 just because it's more difficult to get inspectors to sit
7 there all day and watch us pack one load, whereas maybe he,
8 you know, is packing multiple loads. So it's a little bit
9 -- I would argue that under the current system, it's worse.
10 This new system is going to be better for smaller handlers,
11 make us more equal to the larger handlers in efficiencies.

12 Q So as a small handler, would you say you would
13 rely on these outbound inspections to ensure quality and
14 grade standards?

15 A Well, we also have internal inspections, so
16 that's why I'm in favor of this. We're also doing
17 duplicate inspections. We're big enough that we have to
18 have internal inspections, at least a few people of our
19 own, to monitor things, so that we don't rely strictly on
20 the DFA inspection. Our customers, as been testified to
21 before, customers don't really rely on the DFA. It doesn't
22 add any value to have a DFA certification any longer.
23 They're using our own internal inspections. We're
24 inspecting, you know, in-line in real time versus the DFA
25 who checks every 15 pallet or something, something less and

1 also to a lower grade.

2 Q And have you had an opportunity to discuss these
3 proposals with other large or small handlers?

4 A Yes. Matter of fact like -- it sounds everybody
5 has been doing, we send out newsletters and such to our
6 grower base. We've also -- we have a grower meeting
7 annual, a barbeque, for example, and we discuss this change
8 and other changes that happen with the Board. And we've
9 actually had Board staff come to some of these meetings and
10 give presentations on everything from marketing to
11 potential order changes. And then since I'm on the Board,
12 I've actually received calls from growers, who are not even
13 my growers, you know, neighbors down the street that sell
14 to some of the other people on this call, asking questions
15 to verify, you know, what they're hearing is correct and
16 get my opinion on whether it's going to help or hurt the
17 industry.

18 Q In regard to the current inspection moratorium,
19 do you think that current moratorium has had any negative
20 effects on the quality of outbound walnuts?

21 A I don't think it has any negative effects.
22 Matter of fact, I'm happy that we don't have to have it.
23 We haven't changed our inspection process in the least.
24 Again, like others have testified, our customers are
25 setting the bar for us, not USDA grade standards. If we

1 sent something USDA grade standards, it would get rejected.
2 So we're -- as a matter of fact, the only person -- the
3 only customer that I know of that will accept the USDA
4 grade standard is the USDA and I would never send USDA
5 grade -- minimum grade standard to USDA either. They would
6 probably complain. So I don't think it has had any
7 negative impact.

8 Q Could you share how you, in your operation,
9 assure quality and grade standards are being met in the
10 absence of the inspection requirements right now?

11 A Yes. So it's going to be the same as it was
12 before except we don't have the DFA there. So like the
13 Crains, we do inspections on our own incoming to make sure
14 we don't introduce foreign material necessarily to the
15 process. We have internal inspectors pulling samples
16 throughout the shelling process and inshell process for
17 that matter, various stages in the process. And then as it
18 goes into the sorting room or the final packing room, we
19 have people checking it before it goes in, so it gets
20 released, so to speak, to the packing room that this is
21 ready to pack. The inspection done in the packing room
22 again is really a cursory inspection or look at it because
23 it's already gone through all the electronics and it's
24 pretty much ready to go. It's making sure the electronics
25 have been doing their job. It goes across, you know,

1 several places where there's magnets. We have an x-ray
2 machine, aspirators, and then it goes into -- then we have
3 inline inspections. So we're pulling a sample at least a
4 minimum of every pallet that we pack internally to
5 guarantee it meets quality. And if it doesn't, we trace it
6 back and dump that product out and reprocess it, like as
7 been testified to before.

8 Q Okay. Thank you for that detail. I'm going to
9 ask you some questions now on the new assessment mechanism
10 and the proposed new rate. First, though, could you
11 explain how the marketing order currently applies
12 assessments to handlers?

13 A Yeah. I think currently -- well, currently,
14 we're in the moratorium. You mean prior to the moratorium,
15 I assume?

16 Q Yes, sir. Excuse me, yes, sir, prior to the
17 moratorium.

18 A The DFA would inspect and stamp the product per
19 their procedure and they would send in the weight to the
20 Walnut Board, who would compile that and send us a bill to
21 charge us. That's how they do it -- that's how they did it
22 before. Is that your question?

23 Q Yes. And in your experience as a small walnut
24 handler, how frequently does that assessment rate change?

25 A Well, it's set every year on an annual basis. I

1 think it might have changed one year in the middle of the
2 year. It takes a Board action. I don't remember exactly,
3 but usually once it's set the beginning of the year, so we
4 know throughout the year that it's the same rate.

5 Q And could you give some examples of why that
6 assessment rate may change, if it does?

7 A Well, the assessment rate is based on, you know,
8 a guesstimate of what the crop is going to be or actually
9 we're using the last three years crop number to build the
10 budget. And if we see an opportunity to take advantage of
11 -- let's say some new health research came out, for
12 example, and we didn't have a budget -- money in the budget
13 to promote this special new and exciting news that came out
14 about the health benefits of walnuts, for example, and we
15 would -- and we could vote to raise the assessment to allow
16 more money to be applied to promote that fact as a
17 marketing tool.

18 Q Okay. And when are those assessment payments
19 that are submitted by the handlers, when are those due to
20 the Board?

21 A They were billing us monthly. I think in the
22 past, the first one was due -- because harvest is such a
23 hectic time, the first one was due, I believe, in December,
24 you know, the first few months are due in December and then
25 it was monthly after that.

1 Q And in terms of the new mechanism, could you
2 explain how that mechanism was developed or what went into
3 the discussions as far as developing this new assessment
4 mechanism?

5 A Yeah. So two things to that, kudos to the staff
6 for coming up with the timing of the payments. So, for
7 example, the Board, in the past we were getting monthly
8 bills and, you know, we wanted to make sure that we weren't
9 charging too much -- if we give a new assessment, it's
10 going to come in on the incoming. So we don't want to get
11 a bill for the entire crop in the first two months, so
12 staff looked back at the history of the billing cycle and
13 that's how they came up with, as I testified, the January,
14 April, and July numbers and then billing -- sending
15 payments due in February, May, and August, so that wouldn't
16 put undue burden on the handlers because, as we sell the
17 crop, you know, cash flow is king.

18 As far as the assessment rate -- what was the
19 other part of your question or did I answer it?

20 Q No, you did. No, I was -- the question was what
21 went into the discussions as far as how the mechanism, the
22 new mechanism was developed, excuse me.

23 A Yeah. So the first part, like I explained, was
24 the timing of the payments. The other part was, you know,
25 since we were moving from a kernel basis to an inshell

1 basis, you can't use the same number because it would be
2 too big. And we also wanted to make sure that we weren't
3 trying to -- since we're working on reserves right now and
4 depleting the reserves, we didn't want to make a rate that
5 looked like, okay, we didn't assess for the last two years
6 and now we're going to get all our money back. It would
7 put undue burden on growers through the handler assessment.
8 So we wanted to ease the -- the discussion was around
9 easing the number back in, making it reasonable, especially
10 in these times of low prices and growers are struggling, we
11 wanted to -- you know, we can't stop marketing, so we need
12 some minimum amount of money, but we need to set a rate
13 that was reasonable and not looking like we're trying to
14 recoup just to rebuild our coffers. We wanted to be able
15 to fund the budget, but not, you know, have a bunch of
16 excess.

17 Q Okay. So to clarify, the new proposal assessment
18 mechanism would be based on product received by the
19 handlers and reported in shell pounds; is that correct?

20 A That's correct.

21 Q And to clarify also, would you say all handlers
22 currently receive walnuts inshell?

23 A Yes. I've never received walnuts -- no, they
24 didn't have to be inshell, I believe.

25 Q Okay. In your testimony, you said -- you

1 referred to CWB Form 1. As CWB Form 1 currently stands,
2 how was that information being used by the Board currently?

3 A Well, so the Commission, as was testified before,
4 the Commission is assessed on incoming weight and so that
5 information is already being collected. So that was part
6 of the discussion on, you know, what are the other ways we
7 could figure out to assess, should we put it on outgoing
8 still, you know, self-report or something like that, and
9 that was part of the discussion. And the easiest way to
10 not have undue burden on the handlers, on the staff,
11 increase cost, et cetera, we decided to use the same method
12 of just pounds coming in, inshell basis, just like we do
13 for the Commission.

14 Q And you said there would be no additional burden
15 on the administrative staff for the CWB, is that correct?

16 A Not significant, no. I mean, it's the same
17 information they're already collecting, so it would be the
18 same with the handlers. We're already reporting this
19 information.

20 Q Okay. In regards to the proposed new assessment
21 rate, it was 0.0125; is that correct?

22 A Yeah, a penny-and-a-quarter, yes.

23 Q Was the Board's decision unanimous when coming up
24 with that new assessment rate?

25 A You know, there was robust discussion. I

1 remember this specifically in a couple of the Committee
2 meetings, anyway, that there was -- there was several
3 different proposals and pros and cons were discussed of all
4 the different various numbers. I think it was as high as
5 two cents and as low as zero, not even putting one in, but
6 the discussion was very robust. As far as the Committee, I
7 believe the recommendation was not unanimous, but it was
8 obviously the majority. But then at the Board level,
9 again, I'd have to look at the minutes, but I believe it
10 was unanimous.

11 Q Okay. And in your testimony, you also say that
12 that new proposed rate would be enough to generate
13 sufficient assessment revenue to support the Board's -- to
14 support the Board until the completion of this rulemaking
15 process. Could you speak to that further?

16 A Well, that's the hope. I mean, we hope that --
17 you know, there's lots of people who think we should put
18 more money into things. There's people that wish you put
19 less. So I think after the robust discussion, we came to a
20 consensus that this was going to be a good rate that would
21 provide, you know, a good base for this coming budget and
22 we needed to get through -- and also the fact that we could
23 enable it in mid season, so that if we do run out of
24 reserves, we still have money to meet our commitments that
25 have already been made. We cut the budget back

1 significantly during this time to make sure that we would
2 have enough money. So that was the major of the discussion
3 on setting the rate.

4 Q Okay, okay. In regard to -- you spoke to the
5 additional language being added to the order that would
6 allow the Board to apply interest and late payment charges.
7 To your knowledge, is the Board currently having issues
8 with handler compliance regarding assessment payments?

9 A I know there's been some issues in the past, but
10 I don't think it's widespread. I think the problem is
11 there hasn't been any teeth in the law and I think adding
12 this in is going to just be further encouragement to make
13 the assessments on time, get your reports in on time.
14 There's no set rate and the Board can decide still whether
15 we want to even impose a penalty or what level of penalty.
16 Maybe the penalty will be zero to get started, to get
17 people acclimated and accustomed to the new process. But I
18 think it's -- again, like it's been testified to before, I
19 think it's general, good general business practice to
20 encourage people to pay and get their assessments in on
21 time.

22 Q Okay. And one last question, do you agree with
23 the proposed amendments as they are set out in the Notice
24 of Hearing?

25 A I do.

1 MR. QUINONES: All right, thank you. No further
2 questions, Your Honor.

3 CHIEF JUDGE STROTHER: Any questions from anyone
4 else at USDA?

5 MS. CHILUKURI: Yes, Your Honor. This is Rupa
6 Chilukuri for USDA and I have a few questions for Mr.
7 Carriere.

8 CHIEF JUDGE STROTHER: Your witness.

9 MS. CHILUKURI: Thank you.

10 BY MS. CHILUKURI:

11 Q So, Mr. Carriere, I'm taking a look at 984.69
12 right now, part A. So that paragraph refers to each
13 handler's pro rata share shall be the rate of assessment
14 per inshell pound of walnuts fixed by the Secretary times
15 the pound of walnuts received by him or her for his or her
16 own accounts. So that is really the language that is part
17 of the change that you're proposing, is that correct?

18 A That's correct.

19 Q And I was curious how you all -- how the Board
20 came to this language. Did you look at other marketing
21 orders or how did you come to this determination of what
22 the language should look like?

23 A Yeah. So part of the discussion was how the
24 almond industry does it. They have an incoming assessment
25 versus outgoing like -- and in fact, I think we were -- if

1 I remember correctly, we were one of the only boards that
2 does it this way, on the outgoing. So that definitely
3 entered into the discussion and influenced our decision to
4 go this way. Plus, like I mentioned already, we're already
5 collecting some of this information, so it would reduce the
6 burden for extra reporting.

7 Q And in terms of -- you referenced almonds, do you
8 have personal knowledge of that? Like do you work in
9 almonds or is it just based on the almond's order, itself?

10 A We grow almonds as well. We grow Hammonds in the
11 North here.

12 Q Okay. And are you regulated in part by the
13 marketing order? Do you have actual experience with
14 almonds in terms of the marketing order, the almonds
15 marketing order?

16 A Yes. Several years ago, I was also a Hammond
17 handler, so -- no longer, but we were.

18 Q So you have seen how this, I suppose this
19 language of received by the handler for his own account,
20 how that works in your almond business?

21 A That's correct, both as a grower and as a handler
22 of almonds.

23 Q Very good, thank you. I sort of wanted to
24 understand a little bit more about the burden if this
25 proposal is to be effectuated and just so I can understand

1 how it would work. So, currently, you are assessed on
2 inspected and certified walnuts, whereas the proposal wants
3 you to be assessed on all walnuts handled. Isn't that --
4 isn't the proposal much broader? Like isn't what you
5 handle much broader than what is ultimately inspected and
6 certified, so shouldn't the burden be greater?

7 A No, not necessarily. Matter of fact, I'm looking
8 forward to telling some of my growers that, you know, some
9 of the garbage they're bringing in at the last minute
10 shouldn't even come in because they're going to get
11 assessed on it. It doesn't -- the cost is just as much to
12 process or actually more to process bad walnuts than it
13 does good walnuts. So I don't think it's going to change
14 the burden at all. This is a minuscule cost of the whole
15 process. So if the walnuts coming in were, you know, only
16 good enough for bird food under either scenario, I'm still
17 going to send them to bird food. So I don't think it has
18 the burden at all.

19 MS. CHILUKURI: Okay, okay. And let's take a
20 look at Exhibit 6. So if Mr. Hatch could pull that up.
21 Thank you.

22 BY MS. CHILUKURI:

23 Q So, Mr. Carriere, taking a look at the right
24 side, would you agree that the highlighted language, as it
25 relates to exemptions on assessment, would you agree or

1 what is your thought on that language? Should it be
2 included in the marketing order?

3 A Absolutely. To be honest, I thought it was
4 already in there because those are minuscule numbers, in my
5 opinion, so it doesn't really affect the overall scheme of
6 things.

7 Q When you say they're minuscule numbers, do you
8 mean are these -- would these exemptions not be -- are they
9 even worth having them?

10 A Yeah. I mean, you don't want -- you don't want
11 somebody to be penalized or found guilty of not following
12 the order if they're, you know, sending -- if I send 20
13 pounds of walnuts to my sister via parcel post -- I guess
14 that would be over -- anyway, four pounds, three-and-a-half
15 pounds, if I sent three-and-a-half pounds to my sister, you
16 know, by post, you know, I got to make sure -- I have to
17 fill out a form, make sure I got -- you know, got them
18 assessed. That seems silly.

19 Q Thank you. So I'm taking a look at some language
20 in your statement and you mentioned, "the establishment of
21 a rate enables the CWB to collect assessments upon
22 publication of the final rule of the year in which they
23 apply." So just to clarify, when usually there's an
24 effective date delay, so it may be -- rule publish hasn't -
25 - there's time for people to learn about it, so there may

1 be a 30-day delay. So it wouldn't be immediately upon
2 publication. But what is the importance of having a
3 midyear rate in effect?

4 A Well, we're operating on our reserves at the
5 moment, so we want to make sure that we have enough money
6 to meet our commitments, minimum commitments that we've
7 already committed to, as well as a lot of the activities
8 that we do as a board, they want to know that there's going
9 to be money available before we start negotiating
10 contracts, for example, let's say for health research or
11 whatever. I think we need to make sure that we have the
12 ability to do it earlier if we want to.

13 MS. CHILUKURI: Thank you, Mr. Carriere. I don't
14 have any -- I have no further questions.

15 CHIEF JUDGE STROTHER: Okay. Anything further
16 from USDA?

17 (No response.)

18 CHIEF JUDGE STROTHER: Anything from participants
19 via Zoom?

20 (No response.)

21 CHIEF JUDGE STROTHER: Any examination of this
22 witness requested by participants via telephone?

23 (No response.)

24 CHIEF JUDGE STROTHER: Does the California Walnut
25 Board have any examination in the nature of redirect?

1 MS. DONOHO: No, we do not.

2 CHIEF JUDGE STROTHER: Okay. We had one exhibit
3 with this witness, Exhibit 14, which is just the testimony
4 prepared in form of a statement. Are there any objections
5 to putting Exhibit 14 into the record?

6 (No response.)

7 CHIEF JUDGE STROTHER: Hearing none, Exhibit 14
8 is made a part of the record in this case.

9 (The document referred to was
10 marked for identification as
11 Exhibit 14 and was received
12 in evidence.)

13 CHIEF JUDGE STROTHER: You may step down, Mr.
14 Carriere. Thank you for your testimony.

15 MR. CARRIERE: Thank you, Judge.

16 (Witness excused.)

17 CHIEF JUDGE STROTHER: Mr. Guerra?

18 MR. GUERRA: Yes, sir.

19 CHIEF JUDGE STROTHER: Are you prepared to
20 testify?

21 MR. GUERRA: I am.

22 //

23 //

24 //

25 //

1 Whereupon,

2 FRANK GUERRA

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

5 CHIEF JUDGE STROTHER: I take it that the
6 California Walnut Board probably wants us to follow the
7 procedure we've been following, which is the floor is your,
8 Mr. Guerra. You may give your testimony. You're up, Mr.
9 Guerra.

10 DIRECT TESTIMONY

11 MR. GUERRA: All right, I'm sorry. My name is
12 Frank Guerra, F-R-A-N-K, G-U-E-R-R-A. My address is P.O.
13 Box 1117, Hollister, California 95024. I am President of
14 the Guerra Nut Shelling Company, a family owned and
15 operated business, which has been growing and processing
16 walnuts in Hollister, California continuously since 1947.
17 I am testifying as a small handler. I serve on the
18 California Walnut Board in the capacity of member and sit
19 on the Audit, Executive, Market Development, and Grades and
20 Standards Committees. Today, I would like to discuss
21 several justification points regarding the proposal to
22 revise quality control and inspection. I will be
23 addressing section 984.13.

24 It is intent of the amendment to insert the word
25 "receive" into the definition of "to handle," section

1 984.13. This modification to the definition of handle is
2 necessary and results from the elimination of the
3 regulations pursuant to section 984.51, inspection and
4 certification of inshell and shelled walnuts, and section
5 984.52, processing of shelled walnuts, which previously
6 required a certificate of inspection as the basis for
7 assessment. This proposal aligns with other proposed
8 changes, including a new mechanism for assessment
9 collection, section 984.69, that is based on the walnuts
10 received by a handler. If implemented, the proposal will
11 enable alignment of changes in the amendment.

12 To handle will now include to receive, pack,
13 sell, consign, transport, or ship. This does not include
14 sales and deliveries within the area of production between
15 handlers. These are considered inter-handler transfers.
16 In making the aforementioned changes to the order, the
17 scope of to handle must be expanded. In order to implement
18 the new method, receipts must be added to the scope of the
19 definition to enable the industry to use California Walnut
20 Board Form 1, crop acquisition report, as the basis for
21 assessment. Handlers will benefit from this change, as the
22 new proposed language will allow for an alternative
23 mechanism of assessment outside of certification. Using an
24 already existing handler form, CWB Form 1, for assessments
25 will not increase handler burden. The proposal will be

1 implemented through the existing order authority parameter
2 and requirements. This concludes my oral testimony.

3 CHIEF JUDGE STROTHER: Okay. Any direct style
4 examination by the California Walnut Board? I guess I'm
5 giving you a chance to change mind on that.

6 (No response.)

7 CHIEF JUDGE STROTHER: Hearing none, does USDA
8 have any questions for this witness?

9 MR. QUINONES: Yes, Your Honor. This is Geronimo
10 Quionones and I have a couple of questions for Mr. Guerra.

11 CHIEF JUDGE STROTHER: It's your witness.

12 MR. QUINONES: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. QUINONES:

15 Q Good afternoon, Mr. Guerra.

16 A Good afternoon.

17 Q In your testimony, you discuss that you serve on
18 a couple different committees. Could you please explain
19 your role on those committees you serve on?

20 A I'm Vice Chair of the Grades and Standards
21 Committee. I'm just a regular member of the Audit,
22 Executive, and Market Development Committees.

23 Q And how long have you served on each of these
24 committees?

25 A I'm new to the Audit Committee and Executive

1 Committee, maybe in the last couple of years; this year,
2 first year for Executive and Audit. Market Development,
3 I've been on for probably at least a half a dozen years and
4 Grades and Standards a little longer than that. I've been
5 on the Board for 12 years. And prior to that, I was an
6 alternate on the Commission.

7 Q And in your opinion, do those committees broadly
8 represent stakeholders of all different sizes within the
9 industry?

10 A Yes, absolutely. I'm proof of that. I'm a
11 little guy.

12 Q All right. In regard to the discussions to -- or
13 the proposal to change the "to handle" definition, can you
14 explain how those discussions came about?

15 A Well, they were reaction to the other rules that
16 are being -- wanting to be put into place in order to make
17 it possible to collect assessments by the new alternative
18 method and to make sure everybody is held accountable
19 through, you know, through those -- the reports that are
20 already being prepared.

21 Q And was that decision -- or was the decision to
22 change the definition unanimous?

23 A I would say yes. I don't recall any dissension
24 on that point.

25 Q So if you could please clarify for us that do not

1 know, can you please explain when exactly does a handler
2 function begin?

3 A I would say once the product is received from the
4 grower. As was discussed earlier, it comes through -- it
5 can come through growers, huller, or it can come through a
6 commercial huller. We take possession of it. We do when
7 it's -- we actually pay for the hulling in from the field,
8 so we take possession of it at that point in time and then
9 it reaches our plant. So we're -- I would say we're on
10 from the time it leaves, either the grower's possession or
11 when he's turned it over to a commercial huller and dryer.

12 Q Could you explain how the proposed new definition
13 of "to handle" helps align with the new assessment
14 mechanism?

15 A Yes. Like I said, it keeps -- it helps include
16 anybody who is touching the product in the chain of
17 custody, as it moves through the industry. So it just
18 broadens that definition, so that it catches everybody with
19 those terms.

20 Q Okay. Speaking a little bit to some of the
21 technological advancements that have been discussed here
22 today, would you say those are similar for small and large
23 businesses?

24 A Yes. It definitely is a -- it's a necessity
25 nowadays. Not to say that there aren't smaller, even

1 smaller companies that haven't invested in all of the
2 newest technologies, but it's a necessity to keep up with
3 the demands of the quality that's required in the
4 marketplace.

5 Q Can you describe the types of advancements in
6 technology equipment that have helped you or your
7 operation?

8 A Sure. We've been in business for a long time, so
9 I've seen the technology evolve over the years and I'm sure
10 there was a time when there was no electronic sorting, but
11 my earliest recollection is that there was some very, you
12 know, low valued electronic sorting going on maybe 50 years
13 ago -- well, maybe 60 years ago. But as time has gone on,
14 the color sorting, you know, given way to -- or in addition
15 to that, the laser sorting, which -- and the newer
16 technologies that were discussed, which helps separate the
17 dark from the light, but more importantly shell from the
18 walnut meats and even other -- other defects that can be
19 identified and, of course, foreign material as well, shell
20 and foreign material. So we have those technologies.
21 We've also invested in pasteurization as a, you know,
22 response to the demands from the market. So we have
23 packaging. We have most of all the newer technologies
24 available even though we're considered a small handler.

25 Q Okay. Do you envision any handlers continuing to

1 use outbound inspections to maintain quality assurance?

2 A Possibly and we are still one that is using that
3 at this point in time. We have our own people, but we're
4 still -- we've been around for so long, it's hard to kick
5 old habits. But we do use the DFA for incoming
6 inspections. That's a third-party inspection that we use,
7 as was discussed earlier for determination of the value of
8 the product when it comes to assigning a price for sales --
9 excuse me, from purchasing from the grower. He also
10 determines where we go with the product, how it's going to
11 be used. And we do still use inshell and shelled outgoing
12 with DFA. It's our goal to transition. You know, this all
13 started September 1st, but it's our goal to transition to
14 doing all in-house as well and saving the money that's been
15 discussed along the ways. So there may be -- I know
16 smaller companies than me -- than ours that have already
17 transitions. It's just, you know, this is our position at
18 this point in time, but it will be done at our facility as
19 well. The option is still available.

20 Q Okay, thank you. And one last question, as a
21 member of the Board and as a small handler, would you say
22 you agree with the proposed amendments presented today at
23 this hearing?

24 A Yes, I would.

25 MR. QUINONES: All right, thank you. No further

1 questions, Your Honor.

2 CHIEF JUDGE STROTHER: Any other questions from
3 USDA?

4 MS. CHILUKURI: Yes, Your Honor, this is Rupa
5 Chilukuri.

6 CHIEF JUDGE STROTHER: Yes.

7 MS. CHILUKURI: Thank you.

8 CHIEF JUDGE STROTHER: Your witness, Counsel.

9 BY MS. CHILUKURI:

10 Q Mr. Guerra, I just have a few questions for you
11 about the definition of "to handle." You indicated that
12 it's broadening -- or let me know if I misunderstood -- you
13 indicated that it's broadening the scope of the definition,
14 so let's take a look. So 984.13, "to handle" means, and
15 this is what the proposal -- the proposed language, "to
16 handle means to receive, pack, sell, consign, transport, or
17 ship, except as a common or contract carrier of walnuts
18 owned by another person or in any other way to put walnuts,
19 inshell or shelled, into the current of commerce." So by
20 now adding to receive, is that -- would that increase the
21 number of people who are now handlers?

22 A That's a good question. I wouldn't think that it
23 would. I can't think of someone who would receive walnuts
24 and then not engage in one or more of these other
25 definitions, but I guess that's always a possibility and

1 maybe that -- and that's why it's being added, so that
2 somebody doesn't just -- product doesn't slip through the
3 system, you know, unassessed or unaccounted for and then
4 unassessed.

5 Q Okay. So in your own experience, do most
6 handlers that you and that you know of, do they engage in
7 the handling process from that point of receipt, onward, or
8 could they have done something else? They don't receive it,
9 but they pack it or ship it or do something else?

10 A Well, in the past, there's been a class of people
11 who would come in or companies that would come in and maybe
12 not receive it. They wouldn't have brick and mortar
13 facilities. They might just be passing it through from a
14 grower into commerce overseas. From time to time, that's
15 happened in the past, where people come in and circumvent
16 the process. And of course that -- you know, there's
17 multiple reasons in the past because you're not accounting
18 for it. There's also your name is not out there. I guess
19 in the past, you wouldn't have inspections, which are now
20 being removed anyway. But, you know, there's a number of
21 issues, food safety issues, it's good to know who is out
22 there involved in the industry to make sure that, you know,
23 you're not getting a black eye from someone who is
24 operating under the radar.

25 Q Okay, okay. So right now as it's written,

1 assessments are now tied to receipt; is that correct?

2 A Right now? No, there's assessments --

3 Q I'm sorry.

4 A -- tied to inspections, outgoing inspections.

5 Q So as proposed, inspections would be -- not
6 inspections -- assessments would be tied to receipt of
7 walnuts, is that right?

8 A That's correct.

9 MS. CHILUKURI: Okay, okay. And can you take a
10 look at Exhibit 6? And so, Mr. Hatch, if you could pull
11 that up? Thank you.

12 MR. HATCH: Yeah.

13 BY MS. CHILUKURI:

14 Q So in taking a look at the right-hand side, the
15 right column, would you agree -- I guess what is your
16 position as to what 984.67 should read? Do you think it
17 should include that highlighted language that had been
18 inadvertently omitted in a prior version?

19 A Yes, I do and as Bill -- Mr. Carriere said
20 earlier, he thought those were already exemptions in there,
21 but they deserve to be in there as exemptions.

22 Q Thank you. And now speaking more generally to
23 the proposals you've discussed, can you talk more about the
24 benefits or costs of the proposals for you as a handler, to
25 growers, and to consumers?

1 A Well, yes. Benefits, obviously, it's been
2 discussed, it saves the industry inspection costs,
3 duplicate assessment costs. It would also save, in my
4 opinion, the staff. And right now, they're sending out as
5 many as 12 invoices a year based on the inspections and
6 have a second form that they're dealing with. And so they
7 would have only one form to work off it and their
8 assessments, the Board assessment would be done three times
9 a year and really only off of one calculation, so it should
10 make the savings there for the staff and maybe down the
11 road to the -- you know, to the industry.

12 Sorry, I wrote some notes on this because I knew
13 that was coming. Oh, well, obviously, so we're able to
14 assess again or continue to assess and continue the work
15 that the Board does, which is, in my opinion, very
16 important, you know, continue the programs that are in
17 place to increase the demand for California walnuts here
18 and abroad. So that's very important, so keep that --
19 let's keep that cash flow for that purpose.

20 MS. CHILUKURI: Okay. Thank you, Mr. Guerra. I
21 have no further questions.

22 CHIEF JUDGE STROTHER: Any further questions from
23 USDA?

24 (No response.)

25 CHIEF JUDGE STROTHER: Any questions from those

1 participating via Zoom?

2 (No response.)

3 CHIEF JUDGE STROTHER: Any questions from those
4 participating via telephone?

5 (No response.)

6 CHIEF JUDGE STROTHER: Any questions in the
7 nature of redirect by the California Walnut Board?

8 (No response.)

9 CHIEF JUDGE STROTHER: Hearing none -- oh, I
10 meant to ask, I didn't quite catch it or I don't quite
11 remember, Mr. Guerra, did you give us an address?

12 MR. GUERRA: Yes.

13 CHIEF JUDGE STROTHER: Okay, good, good, all
14 right. With that, there was -- Mr. Guerra had one exhibit
15 -- I'm sorry?

16 MS. SANTANA: (technical interference) has raised
17 her hand.

18 CHIEF JUDGE STROTHER: I'm sorry, is that you,
19 Ms. Santana? You're kind of breaking up.

20 MS. SANTANA: Yeah, this is Marisa Santana. I
21 was just saying that Ms. Donoho has raised her hand. I
22 don't know if she still wanted to speak.

23 MS. DONOHO: It was an accident, sorry.

24 CHIEF JUDGE STROTHER: Okay, thank you.

25 Accidents will happen. All right. With that, I started to

1 say Mr. Guerra had one exhibit, Exhibit 15, his testimony
2 in the form of a statement. Any objections to the
3 admission of Exhibit 15?

4 (No response.)

5 CHIEF JUDGE STROTHER: Hearing none, Exhibit 15
6 is admitted into the record.

7 (The document referred to was
8 marked for identification as
9 Exhibit 15 and was received
10 in evidence.)

11 CHIEF JUDGE STROTHER: Mr. Guerra, thank you for
12 your testimony. You may stand down --

13 MR. GUERRA: Thank you.

14 CHIEF JUDGE STROTHER: -- from the virtual
15 witness stand.

16 (Witness excused.)

17 CHIEF JUDGE STROTHER: How is my hearing reporter
18 holding up? Ms. Feldman?

19 COURT REPORTER: Fine, thank you.

20 CHIEF JUDGE STROTHER: Okay. I think should just
21 go ahead and see what we can get done before 8:00 eastern
22 time, 5:00 Pacific time. Professor Goodhue, are you ready
23 to testify?

24 MS. GOODHUE: I am, Your Honor, but I understand
25 we may want to request to change the order of witnesses.

1 I'll let Ms. Hill or Ms. Donoho explain what they'd like to
2 do.

3 CHIEF JUDGE STROTHER: Ms. Donoho?

4 MS. DONOHO: Yes, Your Honor. We have come to
5 find out that Mr. Bill Tos, who is scheduled to testify
6 after Dr. Goodhue, has an appointment tomorrow morning at
7 9:00 a.m. our time, that he will not be able to change and
8 we didn't know if it presented a problem to perhaps allow
9 him to testify before Dr. Goodhue today, just to make sure
10 he's available.

11 CHIEF JUDGE STROTHER: Thank you for bringing
12 that to our attention, certainly not a problem for me. Is
13 there any objection to taking Mr. Tos out of order, that is
14 taking him ahead of Dr. Goodhue?

15 (No response.)

16 CHIEF JUDGE STROTHER: Hearing no objection,
17 we'll call Mr. Tos to the stand. By the way, on the
18 exhibit list on the web page, I think Tos is T-O-S. As I
19 understand it, we've got two Ss, just as a typo on the list
20 of exhibits. Okay, Mr. Tos, are you there?

21 MR. TOS: Yes, I am, Your Honor.

22 //

23 //

24 //

25 //

1 Whereupon,

2 WILLIAM TOS, JR.

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

5 CHIEF JUDGE STROTHER: Okay. I guess we'll
6 follow the usual, unless California Walnut Board has a
7 different idea, and we'll simply have the witness present
8 his statement. Mr. Tos, the floor is yours.

9 DIRECT TESTIMONY

10 MR. TOS: Thank you, Your Honor. My name is
11 William Tos, Jr. It's spelled W-I-L-L-I-A-M, T-O-S, J-R.
12 I usually go by Bill, but that is my legal name. I'm a
13 third generation large Southern California family farmer, a
14 co-owner of Tos Farms, Inc. and a partner with the Tos
15 Farming Company in Hanford and Kings County. I serve on
16 the California Walnut Board in the capacity of alternate
17 and currently sit on the Production Research, Marketing
18 Order Revision, and Executive Committees.

19 Today, I would like to discuss several
20 justification points regarding the proposal to eliminate
21 volume control. I will be addressing sections 984.49,
22 984.54, 984.56, 984.66, 984.67, 984.456, and 984.464. I
23 believe I win the award for the most numbers at this stage.
24 The purpose of the proposal is to remove stayed or
25 suspended provisions of the order pertaining to section

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1 984.49, volume regulation and associated provisions;
2 section 984.54, establishment of obligation; section
3 984.56, disposition of reserve walnuts; section 984.66,
4 assistance of the Board to meeting reserve obligation and
5 conforming changes; section 984.67, exemptions and
6 regulations pursuant to exemptions; section 984.456,
7 disposition of reserve walnuts and walnuts used for reserve
8 disposition credit; section 984.464, disposition of
9 substandard walnuts. If implemented, the proposal will
10 simplify the order pertaining to only those authorities
11 currently in effect.

12 Currently, no volume control is in effect. The
13 volume control provisions were suspended or stayed in May
14 of 2020 through informal rulemaking because they had not
15 been used in over 30 years. Volume control was not used as
16 a mechanism to limit supply, as it was the industry's
17 intent to increase market demand to balance supply. The
18 stayed provisions of the order have quality references that
19 along with the other proposed changes no longer work with
20 the order language. In order to provide maximum clarity,
21 streamlining the language to remove volume control makes
22 the language as clean as possible.

23 One might ask, why not keep the authority and/or
24 how do you know you won't need this in another 30 years?
25 It is evident with the industry's size and global business

1 that controlling the quantity of walnuts in the domestic
2 market would not be a viable solution for market stability.

3 I support all the proposed amendments because
4 they include better aligning the order to industry
5 practices and eliminating inspection redundancies while
6 reducing administrative burden and costs for handlers and
7 the CWB. The industry as a whole will benefit from the
8 equitable change that makes the order work harder and more
9 efficiently for all of us. And that ends my testimony,
10 Your Honor.

11 CHIEF JUDGE STROTHER: Thank you, Mr. Tos. Any
12 questions in the nature of redirect by the California
13 Walnut Board?

14 (No response.)

15 CHIEF JUDGE STROTHER: Any examination by USDA?

16 MR. QUINONES: Yes, Your Honor. This is Geronimo
17 Quinones and I will be asking Mr. Tos a couple of
18 questions.

19 CHIEF JUDGE STROTHER: Your witness.

20 CROSS-EXAMINATION

21 BY MR. QUINONES:

22 Q Good afternoon, Mr. Tos.

23 A Good afternoon.

24 Q I'm going to start with just a couple general
25 committee questions. The first one is, could you explain

1 your role on each of the different committees that you
2 serve on?

3 A Okay. I am on Production Research. I'm the
4 Chairman of that group. And the Marketing Order Revision,
5 I am a member. And the Executive Committee, I am the
6 Chairman of the Executive Committee.

7 Q As far as the Production Research Committee, can
8 you explain some of the discussions by that Committee in
9 relation to these proposed amendments?

10 A We did not undertake these amendments or these
11 proposed changes. They were not within our area of
12 responsibility, so there was no discussion.

13 Q Okay. Let's see, could you explain some of the
14 advantages and disadvantages of volume control as it's
15 related to the marketing order?

16 A Well, it's been 30 years since it's been
17 implemented. I can hardly remember that far back. So
18 evidently over the last 30 years, there's been no perceived
19 benefit to have any type of volume control. And I think in
20 today's environment, economic environment that we're in,
21 there's significant world production of walnuts and also a
22 Southern Hemisphere production, that trying to -- trying to
23 limit or restrict movement of product at any time would
24 probably be a very poor decision. So I really don't see,
25 you know, going forward that this vehicle would ever be --

1 want to be used.

2 Q Okay. In your testimony, you state volume
3 control was not used as a mechanism to limit supply, as it
4 was the industry's intent to increase market demand to
5 balance supply. Can you give us some examples of any -- of
6 how the industry has increased market demand?

7 A Well, 30 years ago, California was probably the
8 most productive area in the world and, you know, back then,
9 we would have big crops and smaller crops. And so
10 sometimes it would be an advantage to the market and to the
11 overall demand of the product to level that out a little
12 bit because you can -- so if you would be able to control
13 some volume, you might be able to carry it forward tot the
14 next year that might be a short year. I can see that as
15 being an advantage. But then, again, we're talking about
16 over 30 years ago and things are so fundamentally different
17 now that I don't even think it applies. And the -- excuse
18 me, the disadvantage now would be if we tried to do
19 something like this, all we would do is encourage piling up
20 our inventory and putting ourselves at a pricing, you know,
21 disadvantage, trying to do anything like that.

22 Q In your experience, do you believe that volume
23 control would be needed again in the future?

24 A I do not believe so, no.

25 Q Would you like to expand on why?

1 A I think I tried to just a moment ago, but there's
2 just too much supply in the world now, along with the
3 Southern Hemisphere competition supply, that to hold any
4 kind of a reserve would be detrimental to all of us.

5 Q Okay. And some general questions about some of
6 the other proposals being discussed today. Could you
7 further explain how these proposals would be beneficial to
8 both small and large growers?

9 A Well, I think it -- again, it's streamlines the
10 process and it saves approximately six million dollars a
11 year and that would be an advantage to both large and small
12 handlers. Anything to reduce those type of burdens is a
13 win for all of us, the handlers and the growers. So I
14 think that's the main advantage.

15 Q And would you say you would agree with the
16 proposal to create a new assessment mechanism?

17 A Yes, I would.

18 Q And would you say that new mechanism is equally
19 beneficial also to small and large growers and handlers?

20 A Yes, I would.

21 MR. QUINONES: Okay. No further questions, Your
22 Honor.

23 CHIEF JUDGE STROTHER: Okay. Any questions from
24 anyone else at USDA?

25 (No response.)

1 CHIEF JUDGE STROTHER: Does anyone from --

2 MS. CHILUKURI: Your Honor?

3 CHIEF JUDGE STROTHER: Yes?

4 MS. CHILUKURI: Your Honor, this is Rupa
5 Chilukuri. Mr. Tos, just a few questions.

6 CHIEF JUDGE STROTHER: Please.

7 MS. CHILUKURI: Thank you.

8 BY MS. CHILUKURI:

9 Q Is removing volume control authority just part of
10 modernizing the order, as other people have spoken to, a
11 terminology modernizing the order?

12 A Yes, you can say it that way or just streamlining
13 it or getting rid of something that is not used or
14 necessary anymore.

15 Q And Mr. Quinones asked you about I guess the
16 benefits to you as a grower in terms of the various
17 proposals. Can you speak to what you believe the benefits
18 are to consumers and I'm referring to all of the proposals?

19 A Yeah. Well, that's kind of difficult because the
20 -- you know, currently, the grading system or the quality
21 system that our handlers are using, you know, far exceeds
22 the USDA standards. So you're asking what benefit the
23 consumer would have. I can think of none directly except
24 the continuation and the ever pursuit of higher quality,
25 you know, at a good -- at a good competitive price. So I

1 think the consumer can only win as we, as an industry,
2 continue to try to improve ourselves at all levels.

3 MS. CHILUKURI: Okay. Thank you, Mr. Tos. I
4 have no further questions.

5 CHIEF JUDGE STROTHER: Anyone else from USDA have
6 any questions?

7 (No response.)

8 CHIEF JUDGE STROTHER: Anyone in our -- among the
9 Zoom participants have any questions for Mr. Tos?

10 (No response.)

11 CHIEF JUDGE STROTHER: Anyone participating via
12 telephone have any questions for Mr. Tos?

13 (No response.)

14 CHIEF JUDGE STROTHER: California Walnut Board
15 have anything in the nature of redirect question?

16 (No response.)

17 CHIEF JUDGE STROTHER: Hearing none, Mr. Tos had
18 one exhibit, Exhibit 17, which is his testimony in the
19 statement form. Any objections from anyone to the
20 admission of Exhibit 17 into the record?

21 (No response.)

22 CHIEF JUDGE STROTHER: Hearing none, Exhibit 17
23 is made a part of the record in this proceeding.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Exhibit 17 and was received
4 in evidence.)

5 CHIEF JUDGE STROTHER: You may step down from the
6 virtual stand, Mr. Tos. Thank you for your testimony
7 today.

8 MR. TOS: Thank you, Your Honor, and thank you
9 for making the accommodation in the schedule.

10 CHIEF JUDGE STROTHER: Happy to do it.

11 (Witness excused.)

12 CHIEF JUDGE STROTHER: All right. We've got
13 about 35 minutes left in the schedule time. I think as a
14 practical, we've got two witnesses left. Is it the will of
15 the parties want to bring up Professor Goodhue, try to get
16 through her testimony, at least -- at least get her
17 started. I hate to get someone started and then
18 interrupted, but we have 35 minutes we can make use of.

19 MS. CHILUKURI: Your Honor, would it be -- can we
20 take a five-minute break just so I can confer with AMS
21 briefly?

22 CHIEF JUDGE STROTHER: Yes, of course.

23 MS. CHILUKURI: Okay.

24 CHIEF JUDGE STROTHER: Let's make it a 10-minute
25 break. Let's come back at 25 of.

1 MS. CHILUKURI: Okay, thank you.

2 CHIEF JUDGE STROTHER: All right. We're on
3 break. Thank you. Off the record.

4 (Whereupon, a brief recess was taken.)

5 CHIEF JUDGE STROTHER: Who wants to speak for the
6 -- well, for AMS in the first instance, I guess, or any
7 other parties? You want to try another witness or we want
8 to wrap it up for the evening?

9 MS. CHILUKURI: Thank you, Your Honor. This is
10 Rupa Chilukuri for USDA and our economist, Don Hinman, is
11 not available, so we wanted to -- we were hoping to resume
12 tomorrow morning to ensure --

13 CHIEF JUDGE STROTHER: Okay.

14 MS. CHILUKURI: -- that he can ask questions of
15 Dr. Goodhue. So we were hoping just to wrap it up, wrap it
16 up now, today.

17 MS. GOODHUE: Thank you.

18 CHIEF JUDGE STROTHER: Okay. I mean, you're okay
19 with coming back, Dr. Goodhue? Okay. And, Ms. Donoho,
20 you're good, I take it with this?

21 MS. DONOHO: Yes, Your Honor.

22 CHIEF JUDGE STROTHER: Okay. A couple of quick
23 things by way of housekeeping. You know, we haven't talked
24 about this among the participants really, but, I mean, we
25 are going to have to have a time -- I'm told that the

1 transcript will be expected to be ready in about 10
2 business days, so two calendar weeks, and I have in mind,
3 if we can make it shorter, I do know some of the witnesses
4 indicated the bureaucracy moves slowly, so I don't want to
5 -- don't want anyone feeling that we're holding things up
6 on that. But I think as a practical matter, two weeks for
7 transcript corrections and week for objections to those is
8 about as fast as we can go. But I'm not the one doing
9 them, so if anyone has any comments on that.

10 (No response.)

11 CHIEF JUDGE STROTHER: Okay. And you can think
12 about it overnight. I won't set dates tonight. We'll turn
13 around -- after the objections to transcript corrections
14 come in, we'll have to look at them and we're obligated to
15 certify the transcript. So I think -- I have in mind maybe
16 four weeks for briefs, but I think you can probably start
17 writing briefs before we actually certify the transcript
18 and that would be for initial briefs.

19 Now I hesitate not to provide for reply briefs,
20 but I guess I'd like some thoughts from the parties on
21 that. Certainly, if we had just initial briefs, if
22 somebody wanted to reply to something, I'd want to build in
23 something that gave them really a right to submit a reply
24 brief in a couple of weeks after that. Again, what I was
25 thinking is two weeks for transcript corrections, although

1 we only have one day, so we can go shorter if people
2 thought they could get it done in a shorter amount of time;
3 a week for objections; start up the briefing schedule with
4 say four weeks for initial briefs and then decide what to
5 do about reply briefs. We can talk about that now or take
6 it up after we finish up the witnesses. I think I have in
7 mind closing the record at the end of the testimony
8 tomorrow, you know, but for the certified transcript. I'm
9 not sure it matters. It just emphasizes we've taken all
10 the testimony. We're not going to be taking in any
11 additional proposals or additional evidence in the form of
12 appendices to briefs or anything like that. Anyone have
13 any thoughts about anything I said or have any other
14 housekeeping matters they want to take up?

15 MS. CHILUKURI: Your Honor, I briefly discussed
16 with AMS our thoughts as it relates to timing and
17 deadlines, but --

18 CHIEF JUDGE STROTHER: Yes.

19 MS. CHILUKURI: -- and we have gone a little --
20 much shorter, I think, than your proposals, so I'll confer
21 with them. I think we had based it on what we did two
22 years ago at the prior walnut's hearing. So I'll see how
23 aggressively we want to move, but --

24 CHIEF JUDGE STROTHER: No, that's fine. The
25 burden is -- you know, as you know, the burden is not on me

1 --

2 MS. CHILUKURI: Right, right.

3 CHIEF JUDGE STROTHER: -- in this case. So I'm
4 certainly happy to accommodate the parties, accommodate
5 AMS. This is not seemed like a highly contentious hearing
6 to me, so I can understand how -- I will set whatever dates
7 the parties, the participants think make sense on that.
8 We'll go as quickly as we need to.

9 MS. CHILUKURI: Great. So we'll have a final
10 proposal for you tomorrow.

11 CHIEF JUDGE STROTHER: Very well, I appreciate
12 that.

13 MS. CHILUKURI: Yes, thank you.

14 CHIEF JUDGE STROTHER: Okay. So we'll reconvene
15 tomorrow at 8:00 a.m. West Coast time and 11:00 East Coast
16 time unless -- I mean, we've had two days scheduled. We
17 can go an hour later or whenever anyone wants, you know. I
18 don't want anyone killing themselves over this because, you
19 know -- because I think we're going to get done tomorrow.
20 But, I'm content with 11:00, so we'll see everybody then.
21 Have a good evening. Thanks, everyone. The hearing is
22 closed for the day. We'll reconvene tomorrow.

23 (Whereupon, at 7:40 p.m., the proceeding was
24 adjourned, to reconvene on Wednesday, April 20, 2022 at
25 11:00 a.m.)

Certificate of Reporter, Transcriber, and Proofreader

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Proposed Amendments - California Grown Walnuts

Docket No.:

22-J0011, AMS-SC-22-0010, and SC-22-981-1

Place of Hearing:

Washington, D.C. - Remote

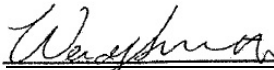
Date of Hearing:

April 19, 2022

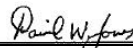
We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 275, inclusive, are the true, accurate and complete transcript prepared from the reporting by David Jones in attendance at the above-identified hearing, in accordance with applicable provisions of the current USDA contract, and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing.

04/29/2022

Date

Wendy Smith, Transcriber
Heritage Reporting Corporation5/3/2022

Date

David Jones, Proofreader
Heritage Reporting Corporation4/19/2022

Date

Madeleine Feldman, Reporter
Heritage Reporting Corporation