

UNITED STATES DEPARTMENT OF AGRICULTURE

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OFFICE OF ADMINISTRATIVE LAW JUDGES

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PUBLIC HEARING

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IN RE: WALNUTS GROWN IN	:	Docket No.
CALIFORNIA, PROPOSED	:	AO-SC-20-J-0011
AMENDMENT TO MARKETING	:	AMS-SC-19-0082
ORDER NO. 984	:	SC-19-984-1
	:	
	:	

Volume I

Monday,
April 20, 2020

Videoconference

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 a.m. Eastern Daylight Time.

BEFORE:

THE HONORABLE CHANNING D. STROTHER

Chief Administrative Law Judge

APPEARANCES:

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

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JEFFREY DAVIS, USDA

ANDREW HATCH, USDA, Document Curator

DONALD HINMAN, USDA, AMS

PUSHPINDER KUMAR, USDA

TERRY VAWTER, USDA

WILLIAM CARRIERE, CWB

CHUCK CRAIN, CWB

HEATHER DONOHO, CWB

ROBERT DRIVER, CWB

RACHAEL GOODHUE, Ph.D., CWB

JACK MARIANI, CWB

ROBERT NORENE, CWB

WILLIAM TOS, JR., CWB

JOHN MACTAVISH, Grower

ERIN HOAGLAND, OALJ, Attorney Advisor

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

2 (11:45 a.m.)

3 JUDGE STROTHER: I'm Judge Channing
4 Strother. I'm the presiding Administrative Law
5 Judge in this proceeding. Good morning,
6 everyone. We're gathered in this virtual setting
7 to conduct an amendatory hearing on recommended
8 changes to the federal marketing order for
9 California walnuts.

10 By the way, folks may want to grab a
11 pencil and a piece of paper. There are some
12 things I'm going to say in this lengthy
13 introduction that folks may want to make a note
14 of.

15 This proceeding has been assigned the
16 following docket or case numbers: J-0011, AMS-SC-
17 0082, and SC-19-984-1. By the way, this is April
18 20, it's 11:46.

19 The California Walnut Board locally
20 administers the Marketing Order Program, whose
21 regulations are contained in Title 7 of the Code
22 of Federal Regulations, Part 984. The Board

1 recommended the amendments that we will be
2 discussing today. Federal Register notice
3 containing these proposed amendments was
4 published February 11, 2020. That's at 85
5 Federal Register 7669.

6 As required by 7 CFR Section
7 900.8(c)(1), this Federal Register notice will
8 later be put into the record as an exhibit.
9 There is also a corrected notice which will also
10 go into the record as a separate exhibit.

11 As set out in the notice summary in
12 the Federal Register posting, it proposed
13 amendments that amend Federal Marketing Order 984
14 to add authority for the Board to provide credit
15 for certain market promotion expenses paid by
16 handlers against their annual assessments due
17 under the order, and it would establish
18 requirements to effectuate that new authority.

19 The purpose of this hearing is for
20 USDA to gather evidence and testimony either in
21 support of or in opposition to the Board's
22 recommendation. My role as Administrative Law

1 Judge during this proceeding is to ensure that
2 the conduct followed adheres to the procedures
3 described in Title 7 of the CFR Part 900, titled
4 General Regulations, Rules of Practice and
5 Procedure, gathering procedures to formulate
6 marketing agreements and marketing orders.

7 Additionally, it's my responsibility
8 to ensure that the information gathered during
9 this hearing is pertinent to the subject matter
10 of the notice. If a witness makes comments or
11 testifies to subject matter outside the scope of
12 the contents of the Federal Register notice, I
13 have authority to interrupt and not, to not allow
14 the witness to continue.

15 However, I will not be issuing a
16 decision at the conclusion of this hearing. USDA
17 will refer to the information gathered during
18 this hearing, as well as public comments
19 submitted at a later juncture in the
20 administrative process. And it will determine
21 whether to move forward with the Board's
22 recommendation.

1 The United States Department of
2 Agriculture oversees the Board's activities to
3 ensure compliance with the laws, regulations, and
4 policies and conducts rulemaking proceedings such
5 as this one in response to the Board's
6 recommendations. Though USDA has used Zoom over
7 the past year for various meetings, we are using
8 it for the first time now for an amendatory
9 hearing.

10 I will administer the hearing that
11 will allow for testimony from interested parties,
12 cross-examination of witnesses, and submission of
13 supporting documents in the form of evidence, in
14 the form of the exhibits. All of this is
15 specified in Title 7 CFR Part 900.

16 In order to do this, USDA has
17 established the following procedural guidelines.
18 By the way, the, I don't think -- I don't think
19 I'll read the hyperlink, but there is a USDA AMS
20 webpage that has these procedural guidelines in
21 effect there, as well as copies of all the
22 exhibits.

1 While using this video virtual
2 platform, certain people will be visible on the
3 screen at any given moment as the hearing
4 progresses, myself, attorneys, Board Manager and
5 the person giving testimony or otherwise
6 speaking. Members of the audience will not be
7 visible during the hearing unless they elect to
8 question the witness or volunteer to testify or
9 raise an objection.

10 Similarly, certain people have their
11 microphones activated, myself, the witness
12 testifying, and including during cross-
13 examination the person asking questions and the
14 witness responding to those questions. All other
15 participants' lines will be muted during the
16 hearing.

17 We will begin the hearing with an
18 introduction, which will be a notice of
19 appearances of all USDA personnel, including
20 technical support people, and of industry
21 proponents, so that we are all aware of who will
22 be managing different functions of this

1 proceeding. Each will be asked to state and
2 spell their name, give their professional title,
3 and describe their role in the hearing.

4 Through our pre-registration process
5 we have developed a list of witnesses desiring to
6 testify. I will call those witnesses in order as
7 this list has been presented to me. In addition,
8 prior to testifying, each witness will be sworn
9 in and asked to state and spell their name for
10 the hearing record prior to speaking.

11 By the way, we have a hearing
12 reporter, and this Zoom proceeding is also being
13 recorded.

14 Regulation require that a witness also
15 provide their occupation and an address. In
16 deference to concerns about public disclosure of
17 personal protected information, I ask that
18 witnesses do not divulge an address that is the
19 address of a personal residence. But be sure
20 that the proper people have regular email
21 addresses for you.

22 At the beginning of each witness's

1 statement, the witness should identify all
2 exhibits that they will refer to during their
3 testimony so that the USDA Zoom technical team
4 can prepare to share those exhibits with
5 participants via Zoom. USDA employees supporting
6 this hearing will manage Zoom functions and
7 present documentary evidence for everyone's
8 access through the share screen function in Zoom.

9 Witnesses and cross-examiners are
10 asked to refer to exhibit documents by number so
11 that USDA too can retrieve those documents and
12 make those visible on the screen. Moreover,
13 create a reasonably usable written record. Once
14 a witness is finished making his or her
15 statement, I will officially enter those exhibits
16 into the record, subject to any objections made
17 by any other participant at that time.

18 As noted, it is part of my duties to
19 exclude irrelevant or immaterial testimony or
20 exhibits. I am to preclude unduly repetitious
21 testimony or questioning. I therefore ask of any
22 person seeking to question a witness be online

1 and listen carefully to the entirety of that
2 witness's testimony and previous cross-
3 examination before questioning the witness
4 themselves.

5 Objections to testimony and to any
6 exhibits may be made by clicking on our raise
7 hand function located on the bottom of the Zoom
8 screen, or are participating via telephone by
9 sending a text message objection that refers to
10 the last name to -- this is a telephone number -
11 - (559) 290-0571.

12 The USDA team and I will call on each
13 audience member to speak by enabling their
14 microphone. Is that still, have I expressed the
15 technicalities of the objection method
16 accurately? Any objection?

17 MR. HATCH: Yes, you have.

18 JUDGE STROTHER: Okay. Raise your
19 hand or text a message saying objection.

20 I'd like to make clear that an
21 objection in this proceeding is distinct from a
22 layman's definition of an objection. You may

1 make an objection

2 if you believe there's been some violation of a
3 procedural rule.

4 For instance, if you believe that an
5 exhibit should not be offered into the record
6 because you believe it is not authentic,
7 relevant, or material to the subject matter of
8 this hearing, you may object on those bases. I
9 suppose privilege, things like that would also be
10 proper objections. I suppose unduly repetitious
11 or unduly cumulative would also be.

12 Objections are not testimony and
13 objections are not cross-examination. If you'd
14 like to testify or cross-examine witnesses, refer
15 to the definitions referenced above. 7 CFR
16 900.8(d)(2) provides summary information on
17 objections.

18 And I may also interject my own
19 objections without an objection being made by a
20 participant. The regulations also specifically
21 provide that I may limit testimony of witnesses,
22 as I referenced before, to avoid unduly

1 cumulative or unnecessarily elaborate testimony.
2 Unlike adjudicated hearings, friendly cross is
3 not prohibited.

4 Participants and witnesses are to
5 address each other through me rather than
6 directly to each other. As the cross-examination
7 after a witness has completed delivering his or
8 her prepared materials, members of the USDA and
9 industry proponent team will be given the
10 opportunity to ask the witness questions. I will
11 begin by -- begin with USDA. Once USDA's
12 finished, I will give the proponent group the
13 opportunity to cross.

14 After both USDA and the industry
15 proponents have completed their questioning, I
16 will provide members of the audience an
17 opportunity to ask questions. I will begin by
18 asking members of the audience participating via
19 Zoom to indicate they have a question, again, by
20 checking the raise hand function. That function
21 is located in the bottom of the screen. Then the
22 USDA team and I will call on each audience member

1 to speak by enabling the microphone.

2 Lastly, I will give members of the
3 phone audience the opportunity to ask questions.
4 At that time, the phone lines will be unmuted and
5 any person desiring to participate will be asked
6 to identify themselves by stating and spelling
7 their name and identifying their affiliation.
8 Affiliation would mean your professional title,
9 which group or business you're associated with,
10 if any.

11 Now, if a witness loses connectivity
12 while speaking, we will take a break until that
13 individual can re-establish contact and complete
14 their testimony. If that proves to cause an
15 undue delay, I may determine to call the next
16 witness to testify. And then we can bring back
17 in the other witness. We'll see what happens at
18 the time, basically.

19 If a cross-examiner loses connectivity
20 while speaking, I will ask the technical team to
21 work with that individual to re-establish
22 connectivity. And in the interim, we may move on

1 to the next cross-examiner.

2 We also welcome members of the public
3 to offer testimony and submit exhibits. After I
4 finish these opening remarks, I'd like to give an
5 opportunity for anyone in attendance who has not
6 already signed up to be a witness who would like
7 to testify to sign up to testify.

8 Additional opportunities to sign up
9 will be given each day following the lunch break
10 and before the closing of the hearing. Somebody
11 can remind me of that if I fail to do so. During
12 these instances, we will unmute all participant
13 mics to allow persons to express their interest
14 in testifying.

15 Additionally, and I really advocate
16 following this procedures are probably more
17 efficient and make sure you get through, you can
18 sign up to testify by sending USDA, leave me a
19 message with your name and contact information to
20 walnut.hearing@USDA.gov, walnut.hearing@USDA.gov.
21 If the person who's attending my phone does not
22 have access to email but may join the witness

1 list by contacting Andrew Hatch at (202) 720-
2 6862, (202) 720-6862. That's Mr. Hatch.

3 If public members wish to submit
4 documents into evidence, they will need to email
5 them to walnuthearing@USDA.gov, same email as
6 before, so that the technical team can access the
7 exhibits during that person's testimony and
8 during the testimony, make them available on the
9 shared screen, but also post them in the USDA
10 website.

11 There can be up to an hour delay
12 between the time that the document is posted and
13 when it's available to the public via the
14 website. In the meantime, though, even if -- if
15 it looks like --project that exhibit on the
16 shared screen.

17 Any individuals accessing the hearing
18 through audio only will have the documents
19 available to them on the website. As I mentioned
20 before, we have a court reporter transcribing the
21 entire hearing. Even though each speaker's name
22 appears on the screen as they speak, please

1 mention your full name for the hearing record to
2 ensure accurate attribution.

3 I encourage all participants to speak
4 clearly and slowly so as to ensure that the Court
5 Reporter is able to transcribe everything. I
6 have told the Court Reporter, Mr. Stroman, by the
7 way, is his name, if he has any difficulty
8 hearing or understand the witness or has any
9 other problems, that he may interject and request
10 assistance at the time, assuming he still has
11 voice.

12 USDA will post the entire transcript
13 of this hearing to its website as quickly as
14 possible. As I noted, Zoom also provides full
15 reporting capabilities, and we are recording the
16 hearing, but for now for in-house training
17 purposes only.

18 There may be a time after the
19 transcript is made available for participants to
20 submit proposed corrections to that transcript.
21 Corrections are to be limited to spelling or word
22 identification. Corrections may not include a

1 change to the actual testimony given by the
2 witness. I intend to provide an opportunity for
3 objections to proposed transcript corrections
4 too.

5 Once the corrections are accepted and
6 the transcript is certified, participants will
7 have the ability -- opportunity to file briefs
8 regarding the proposed -- base regarding proposed
9 findings of fact and conclusions of law based on
10 the hearing record. New evidence or alternative
11 proposals may not be included in those briefs.

12 I would like the participants to
13 confer as we go along as to how to go about
14 scheduling transcript corrections, objections,
15 and briefs. Also, the types of briefs. I don't
16 know whether we need just initial briefs or
17 initial reply briefs, or step briefs as initial
18 brief by some parties. Answering briefs and
19 reply briefs will be appropriate. But I'm here
20 to serve the parties in that regard, and here to
21 serve the USDA officials that have to write the
22 decision.

1 We will be taking periodic breaks, and
2 we'll certainly take a lunch break. Again, I'd
3 ask the hearing reporter is the hearing reporter
4 is tiring, we will certainly take that into
5 account. We have two days scheduled for this
6 hearing. If we finish before then, I would
7 expect to close the hearing at that time.

8 Again, there's a summary of the
9 proposed guidelines for this hearing posted on
10 our website, and I understand it will also be
11 posted during our shared desktop during our
12 breaks. If anyone needs technical assistance
13 during the hearing, they may contact Jeffrey
14 Davis, Jeff Davis, at (202) 306-2673, (202) 306-
15 2673.

16 I think that concludes my preliminary
17 remarks. Shall we see if there's -- are there
18 any questions? Everybody's satisfied that I
19 covered everything with that lengthy
20 introduction?

21 MS. CHILUKURI: Could we ask that the
22 guidelines be posted to share drive or the shared

1 screen, just so people can take a look at them?

2 MR. HATCH: Sure, I'll do that.

3 JUDGE STROTHER: Okay, hearing nothing
4 further, I guess I would, there are certain
5 exhibits, such as the Notice of Hearing, Notice
6 of Hearing corrections, in the mailing and such,
7 why don't we introduce those to the record now.

8 MS. CHILUKURI: Your Honor, very good.
9 Should we do notice of appearances before that,
10 or would you just like --

11 JUDGE STROTHER: Yes, I said --

12 PARTICIPANT: Who's speaking?

13 MS. CHILUKURI: I'm sorry, Rupa
14 Chilukuri, USDA. And I was just asking about
15 notices of appearances.

16 JUDGE STROTHER: Yes. Yes, as I said,
17 we'll let folks know who's fulfilling what
18 functions by stating appearances. Let's start
19 with USDA.

20 MS. CHILUKURI: This is Rupa
21 Chilukuri. That's spelled R-U-P-A C-H-I-L-U-K-U-
22 R-I. I am an attorney with the Office of the

1 General Counsel, and I represent the Department
2 of Agriculture, Agricultural and Marketing
3 Service at this hearing.

4 JUDGE STROTHER: Thank you, Ms.
5 Chilukuri. Next.

6 MS. SCHMAEDICK: This is Melissa
7 Schmaedick, M-E-L-I-S-S-A S-C-H-M-A-E-D-I-C-K.
8 I'm a Senior Marketing Specialist with the
9 Marketing Order and Agreement Division. I will
10 be cross-examining witnesses in this proceeding,
11 and then also I will be writing the recommended
12 decision as we move forward with this process.
13 Thank you.

14 JUDGE STROTHER: Thank you, Ms.
15 Schmaedick. Next from USDA?

16 MS. MCGOWAN: This is Tracy McGowan,
17 T-R-A-C-Y M-C-G-O-W-A-N. I am also an attorney
18 with USDA's Office of General Counsel,
19 representing USDA Agricultural Marketing Service
20 today.

21 JUDGE STROTHER: Thank you, Ms.
22 McGowan. Next USDA official.

1 MS. VAWTER: Hi, this is Terry Vawter,
2 T-E-R-R-Y V as in Victor, A-W-T-E-R. I am the
3 Regional Director of the California Marketing
4 Field Office. Our office directly oversees the
5 California Walnut Board and associated programs.

6 JUDGE STROTHER: Thank you, Ms.
7 Vawter. Anyone else from USDA?

8 MR. HATCH: Yes, my name is Andrew
9 Hatch, A-N-D-R-E-W, last name H-A-T-C-H. I am
10 Chief of the Marketing Order and Agreement
11 Divisions, Program Services Branch, and
12 participating in the hearing today as document
13 curator for everybody's reference.

14 JUDGE STROTHER: Thank you, Mr. Hatch.
15 Anyone else from USDA? Mr. Hinman? You're on
16 mute. Could someone unmute Mr. Hinman?

17 DR. HINMAN: Now I'm unmuted?

18 MR. HATCH: Yes, you are.

19 DR. HINMAN: Okay, thank you, yeah,
20 Don Hinman, or Donald Hinman, my full name. D-O-
21 N-A-L-D, last name Hinman, H-I-N-M-A-N. I am an
22 Economist in the Specialty Crops Program of

1 Agricultural Marketing Service.

2 JUDGE STROTHER: You'll be testifying
3 later, Mr. Hinman.

4 DR. HINMAN: Yeah, I know, yes, I'll
5 be presenting evidence, and I will also be cross-
6 examining witnesses. Thank you.

7 JUDGE STROTHER: Are we all set?
8 Anyone else from USDA?

9 MR. KUMAR: This is Pushpinder Kumar,
10 P-U-S-H-P-I-N-D-E-R, last name Kumar, K-U-M-A-R.
11 I'm a Marketing Specialist in Fresno Office with
12 USDA. I will be watching the text messages for
13 objections today.

14 JUDGE STROTHER: Thank you, Mr. Kumar.
15 Anyone else from USDA? Ms. Hoagland, you can
16 introduce yourself.

17 MS. HOAGLAND: Hi, everyone, my name's
18 Erin Hoagland, E-R-I-N H-O-A-G-L-A-N-D. I'm an
19 Attorney Advisor with the Office of
20 Administrative Law Judges, and I'll just be
21 helping out the Judge mostly if there's an
22 objection via Zoom.

1 JUDGE STROTHER: Ms. Hoagland's my
2 Attorney Advisor, essentially my law clerk.
3 Thank you, Ms. Hoagland. Okay, how about
4 industry proponents. Unmute.

5 MS. CONNELLY: Good morning, Michelle
6 Connolly.

7 JUDGE STROTHER: Good morning, you
8 want to identify yourself, your role?

9 MS. CONNELLY: Michelle Connolly,
10 Executive Director of the California Walnut
11 Board, M-I-C-H-E-L-L-E C-O-N-N-E-L-L-Y.

12 JUDGE STROTHER: Welcome, Ms.
13 Connolly. I suppose anyone else on the
14 California Walnut Board?

15 MR. DRIVER: Yes, Robert Driver,
16 California Walnut Board, spelled R-O-B-E-R-T D-R-
17 I-V-E-R.

18 JUDGE STROTHER: Thank you, Mr.
19 Driver. Anyone else from the Walnut Board?

20 MS. DONOHO: Heather Donoho, I'm the
21 Accounting Director for the California Walnut
22 Board. H-E-A-T-H-E-R, last name is D-O-N-O-H-O.

1 JUDGE STROTHER: Thank you. Anyone
2 else from the Walnut Board?

3 MR. CARRIERE: Bill Carriere, can you
4 hear me?

5 JUDGE STROTHER: Yes.

6 MR. CARRIERE: Bill Carriere, William
7 Carriere. I'm on the Walnut Board as a member.
8 William, W-I-L-L-I-A-M, last name Carriere, C-A-
9 R-R-I-E-R-E.

10 JUDGE STROTHER: Thank you, Mr.
11 Carriere. Anyone else from the industry?

12 MR. NORENE: Donald Norene, otherwise
13 known as Robert Norene, spelled R-O-B-E-R-T N-O-
14 R-E-N-E. California Walnut Board, walnut farmer,
15 Northern California.

16 JUDGE STROTHER: Thank you, Mr.
17 Norene. Anyone else from the industry?

18 DR. GOODHUE: Rachael Goodhue, spelled
19 R-A-C-H-A-E-L Goodhue, G-O-O-D-H-U-E. Member of
20 the Walnut Board, and I'm a Professor of
21 Agricultural and Resource Economics at the
22 University of California, Davis, and I'll be

1 testifying on economic impacts.

2 JUDGE STROTHER: Thank you, Ms.

3 Goodhue. Next.

4 MR. MARIANI: Jack Mariani, California
5 Walnut Board member. J-A-C-K M-A-R-I-A-N-I.

6 JUDGE STROTHER: Thank you, sir.

7 Next.

8 MS. CONNELLY: Mr. Tos?

9 MR. TOS: Do I need to use the other
10 line?

11 MS. CONNELLY: Yes, please, if you
12 would.

13 MR. TOS: Okay, all right. Let me put
14 the other line on hold. Okay, my name is William
15 or Bill Tos Jr., and that's W-I-L-L-I-A-M T-O-S
16 and J-R. And I am on the California Walnut Board
17 testifying on their behalf.

18 JUDGE STROTHER: Thank you, Mr. Tos.
19 Any other industry proponents?

20 MS. CONNELLY: Chuck, are you there?
21 Mr. Crain? I see Mr. Crain is signed in on the
22 screen, but I don't know if we can hear him.

1 JUDGE STROTHER: I can't hear him.

2 MR. HATCH: I did adjust his
3 permissions. Try one more time.

4 JUDGE STROTHER: He's showing as muted
5 to me.

6 MS. CONNELLY: Mr. Crain?

7 JUDGE STROTHER: Ms. Connelly, perhaps
8 you could simply introduce him.

9 MS. CONNELLY: Sure, Charles Crain,
10 known as Chuck Crain, C-R-A-I-N. And he serves
11 on the California Walnut Board and California
12 Walnut Commission. He is a member of several
13 committees. He's a grower and a processor or
14 handler as well.

15 JUDGE STROTHER: Very well, thank you.
16 Anyone else? Any other participants out there
17 that expect to have a speaking role in his
18 hearing like to introduce themselves? Do we need
19 to unmute the lines for that?

20 MR. DAVIS: This is Jeff Davis. As
21 identified early on by the CWB, all of the people
22 that were our call-in lines were from them. So

1 their teleconference lines should be more than
2 sufficient.

3 JUDGE STROTHER: Very well.

4 MR. CRAIN: Okay, Michelle.

5 MS. CONNELLY: Mr. Crain, there you
6 are.

7 MR. CRAIN: Good morning, can you hear
8 me?

9 JUDGE STROTHER: We can. I think we
10 take Ms. Connelly's introduction of you, Mr.
11 Crain, as sufficient so we can move on. I'm not
12 hearing anyone else that feels they need to be
13 introduced. Going once, going twice. Okay.

14 So I think perhaps the housekeeping
15 there of getting in the exhibits.

16 MR. CRAIN: This is Chuck Crain
17 calling. I'm on the -- thank you.

18 JUDGE STROTHER: We can hear you Mr.,
19 now we can.

20 MR. DAVIS: I have him on the phone
21 right now, Judge, but yeah, go ahead and just
22 continue.

1 JUDGE STROTHER: Very well, he didn't
2 want to say anything. Okay, does everyone agree
3 it's time to move on to the preliminary exhibits?
4 Okay. Who wants to introduce those exhibits?

5 MS. CHILUKURI: Your Honor, this is
6 Rupa Chilukuri, I'll introduce those exhibits.

7 JUDGE STROTHER: Very well.

8 MS. CHILUKURI: As you said, these
9 exhibits are required by the regulations specific
10 to the 7 CFR 900.4. So Exhibit 1, and I believe
11 as we're speaking, Mr. Hatch will be pulling up
12 the exhibit so people can take a look. Exhibit 1
13 is a copy of the Federal Register notice of this
14 proceeding.

15 (Whereupon, the above-referred to
16 document was marked as Exhibit 1 for
17 identification.)

18 MS. CHILUKURI: It was published on
19 February 11, 2020. That Notice of Hearing
20 contains the proposed regulatory text.

21 On Exhibit 2.

22 (Whereupon, the above-referred to

1 document was marked as Exhibit 2 for
2 identification.)

3 MS. CHILUKURI: Okay, I think Andy
4 might be a little bit delayed, but these are just
5 foundational exhibits. So Exhibit 1 is
6 especially important because it does have the
7 proposed regulatory text. So I'll just proceed.

8 Exhibit 2 is a copy of the Federal
9 Register Notice published on April 10, 2020. As
10 we all know, the hearing that was originally
11 scheduled on the Notice of Hearing that was
12 published on February 11, that hearing has been
13 postponed. The in-person hearing is now taking
14 place by Zoom. So Exhibit 2 is that copy of the
15 Notice of Hearing correction.

16 Exhibit 3 is a true copy of the Notice
17 of Hearing to Interested Persons. So it's a true
18 copy of the February 11, 2020 document.

19 (Whereupon, the above-referred to
20 document was marked as Exhibit 3 for
21 identification.)

22 MS. CHILUKURI: Exhibit 4 is a true

1 copy of the Correction Notice to Interested
2 Persons.

3 (Whereupon, the above-referred to
4 document was marked as Exhibit 4 for
5 identification.)

6 MS. CHILUKURI: Exhibit 5 is a
7 Certificate of the News Release regarding the
8 February 11, 2020 Notice of Hearing.

9 (Whereupon, the above-referred to
10 document was marked as Exhibit 5 for
11 identification.)

12 MS. CHILUKURI: Exhibit 6 is a
13 Certificate of a News Release as it relates to
14 the correction notice.

15 (Whereupon, the above-referred to
16 document was marked as Exhibit 6 for
17 identification.)

18 MS. CHILUKURI: Exhibit 7 is just a
19 Certificate of Officials Notified concerning the
20 original February 11, 2020 notice. So a
21 notification was sent to the Governor of
22 California.

1 (Whereupon, the above-referred to
2 document was marked as Exhibit 7 for
3 identification.)

4 MS. CHILUKURI: And Exhibit 8 would be
5 a Certificate of Officials Notified concerning
6 this current hearing that is taking place right
7 now, the Zoom hearing, the rescheduled hearing.

8 (Whereupon, the above-referred to
9 document was marked as Exhibit 8 for
10 identification.)

11 MS. CHILUKURI: So your Honor, I'd
12 like to move for those eight exhibits to be
13 admitted to the record. And Andy, if you can
14 pull up a couple of them just so we can take a
15 look. And again, these are foundational
16 exhibits. But Exhibit 1, if you could pull that
17 up so people could look through it.

18 MR. HATCH: You should be able to see
19 those on the screen now. This is Andy Hatch, I
20 am sharing my screen, clicking through those
21 different documents.

22 MS. CHILUKURI: Oh, I'm sorry, I had

1 difficulty. I just see your -- I just see sort
2 of your folder. I don't actually see the
3 documents themselves. Maybe it's just me. Can
4 anybody else speak to that? Your Honor, can you
5 see the actual documents?

6 JUDGE STROTHER: I can just see the
7 folder.

8 MR. HATCH: Clicking through the
9 documents. Let me go back real quick, one
10 second.

11 MR. DAVIS: You have to unshare the
12 folder the screen, and then reshare once you've
13 selected the document and opened it, okay?

14 MR. HATCH: Okay. This is Exhibit 1
15 the original notice that published on February
16 11, 2020, announcing the hearing in March.

17 MS. CHILUKURI: And your Honor, would
18 you like me to repeat each of these exhibits
19 again, or does my previous explanation suffice?

20 JUDGE STROTHER: I think your previous
21 explanation suffices. I guess my question is
22 whether since we're bringing them up on screen,

1 we might as well go one by one. Any --

2 MS. CHILUKURI: Exhibit 1, the Notice
3 of Hearing, as Mr. Hatch stated, the Notice of
4 Hearing was published on February 11, 2020.

5 JUDGE STROTHER: Any objections to the
6 admission of Exhibit 1? Hearing none, Exhibit 1
7 is admitted.

8 (Whereupon, the above-referred to
9 document was received into evidence as
10 Exhibit 1.)

11 MS. CHILUKURI: Moving to Exhibit 2.
12 That is the Federal Register Notice correction
13 published on April 10, 2020. And so that notice
14 correction rescheduled in-person hearing for this
15 hearing by Zoom.

16 MR. HATCH: And you can see -- this is
17 Andrew Hatch. You can see the April 10 notice
18 published in the Federal Register announcing the
19 new dates for today's hearing.

20 JUDGE STROTHER: Any objection to the
21 admission of Exhibit 2? Hearing none, Exhibit 2
22 is admitted.

1 (Whereupon, the above-referred to
2 document was received into evidence as
3 Exhibit 2.)

4 MS. CHILUKURI: Exhibit 3 is a true
5 copy of the February 11, 2020 Notice of Hearing
6 to Interested Persons.

7 JUDGE STROTHER: Any objections? It's
8 not on the screen yet. There it is. Any
9 objections to Exhibit 3? Hearing none, Exhibit 3
10 is admitted to the record.

11 (Whereupon, the above-referred to
12 document was received into evidence as
13 Exhibit 3.)

14 JUDGE STROTHER: Exhibit 4.

15 MS. CHILUKURI: Exhibit 4 is a true
16 copy of the Notice of Hearing correction to the
17 April 10 correction notice to interested persons.

18 JUDGE STROTHER: Any objections?
19 Hearing none, Exhibit 4 is admitted to the
20 record.

21 (Whereupon, the above-referred to
22 document was received into evidence as

1 Exhibit 4.)

2 JUDGE STROTHER: Exhibit 5. I'll cut
3 it short. Exhibit 5 is a press release.

4 MS. CHILUKURI: Right, it's a
5 Certificate of a Press Release for the February
6 11 notice.

7 JUDGE STROTHER: I'm not seeing it on
8 my screen.

9 MR. HATCH: It's coming.

10 JUDGE STROTHER: Okay. Any objections
11 to the admission of Exhibit 5? Hearing none,
12 Exhibit 5 is admitted to the record.

13 (Whereupon, the above-referred to
14 document was received into evidence as
15 Exhibit 5.)

16 JUDGE STROTHER: Exhibit 6.

17 MS. CHILUKURI: And that's also a
18 press release that's for the April 10th notice
19 correction.

20 JUDGE STROTHER: Okay, Exhibit 6 is on
21 the screen. Any objections to the admission of
22 this exhibit? Hearing none, Exhibit 6 is

1 admitted to the record.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Exhibit 6.)

5 JUDGE STROTHER: Exhibit 7.

6 MS. CHILUKURI: Exhibit 7 is a
7 Certificate of Officials Notified concerning the
8 original March hearing and the February 11 notice
9 hearing.

10 JUDGE STROTHER: Any objections?

11 Hearing none, Exhibit 7 is admitted to the
12 record.

13 (Whereupon, the above-referred to
14 document was received into evidence as
15 Exhibit 7.)

16 JUDGE STROTHER: Exhibit 8.

17 MS. CHILUKURI: And that is a
18 Certificate of Officials Notified concerning the
19 April 10 Notice of Hearing correction and this
20 hearing by Zoom.

21 JUDGE STROTHER: Any objections?

22 Hearing none, Exhibit 8 is admitted to the

1 record.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Exhibit 8.)

5 JUDGE STROTHER: Okay, are we ready
6 for Exhibit 9?

7 MS. CHILUKURI: Yes, your Honor. I
8 just had a preliminary matter to address that
9 relates to Exhibit 9 and 10, which are related to
10 ex parte communications. So I just wanted to
11 remind everyone that USDA decisionmakers, we can
12 discuss procedural issues with interested
13 persons, but we cannot discuss the substance or
14 merits of the proposal. And that's from the time
15 of the issuance of the Notice of Hearing to the
16 Secretary's decision, if that takes place. So I
17 just wanted to remind everybody of that.

18 And per 7 CFR 900.16, which governs ex
19 parte communications, we're required to enter
20 those ex parte communications on the record. So
21 there have been a few communications that took
22 place after the Notice of Hearing related to the

1 substance of the proposal.

2 So bringing up Exhibit 9, that is a
3 notice regarding ex parte communications that
4 took place. And there's four different breaches
5 that took place, it just sets out the different
6 breaches.

7 (Whereupon, the above-referred to
8 document was marked as Exhibit 9 for
9 identification.)

10 I won't go into detail on each of
11 them, except to say that different individuals
12 contacted different members of -- well I guess
13 the same members of AMS regarding their opinions
14 or their thoughts on the proposal. So these are
15 set out here. Some were phone conversations.
16 Some were email communications.

17 So I would just say to those people
18 who entered -- who emailed or called regarding
19 the merits of the proposal, we cannot accept
20 these as evidence on the record. So we will be
21 seeking to have these admitted on the record, but
22 in drafting the recommended decision, we can't

1 consider this as evidence.

2 So if anybody did commit an ex parte
3 breach, we would ask that you consider
4 testifying. And that we really would appreciate
5 hearing your views, but we can't take this into
6 evidence on the record. So for instance,
7 attachment 1 relates to a conversation that Ms.
8 Connelly had with a member of AMS regarding her
9 thoughts as to what a handler would say.

10 Exhibit -- attachment 2 relates to I
11 think it's Mr. Bremner (phonetic) who contacted
12 AMS regarding his thoughts on the proposal.
13 Attachment 3 relates to Leon Etchepare of Emerald
14 Farms provided his thoughts on the marketing
15 order amendment. And attachment 4 relates to a
16 handler, Mr. Craig Podesta, contacted Andrew
17 Hatch regarding his concerns or thoughts on the
18 proposed order.

19 And we -- so at this time, Your Honor,
20 I'd like to move Exhibit 9 into the record.

21 JUDGE STROTHER: Any objections?
22 Hearing none, Exhibit 9 is admitted into the

1 record.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Exhibit 9.)

5 MS. CHILUKURI: And if we could turn
6 to Exhibit 10.

7 (Whereupon, the above-referred to
8 document was marked as Exhibit 10 for
9 identification.)

10 MS. CHILUKURI: Exhibit 10 is another
11 notice that was filed with the Hearing Clerk and
12 that I'm seeking to have admitted to the record.
13 And this discusses a fifth breach that took place
14 -- the fifth and last breach that took place that
15 I know of so far. And this was between a Mr.
16 Machado and AMS regarding his opinion of the
17 proposed amendment.

18 And if I could seek to move that into
19 the record, your Honor.

20 JUDGE STROTHER: Okay, any objections
21 to the admission of Exhibit 10 to the record?
22 Hearing none, Exhibit 10 is admitted to the

1 record.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Exhibit 10.)

5 JUDGE STROTHER: Okay, well done.

6 MS. CHILUKURI: We have -- I'm sorry.

7 JUDGE STROTHER: Please continue.

8 MS. CHILUKURI: Yes, I was saying we
9 have no other preliminary matters at this time,
10 so we're ready to proceed with our first and only
11 witness if we'd like.

12 JUDGE STROTHER: Okay. Anyone else
13 have any preliminary matters before we get our
14 first witness? Seeing none, how shall we do
15 this? Did you want to call your witness? Or do
16 we just want Mr. Hinman to start talking?

17 MS. CHILUKURI: I had a few
18 preliminary questions for him.

19 JUDGE STROTHER: Well, swear him in.
20 We're going to have to unmute Mr. Hinman.

21 MS. CHILUKURI: Generally the USDA
22 likes to present various data and information

1 regarding the commodity that's the subject of the
2 hearing. So I'd like to call Dr. Donald Hinman
3 to present that information.

4 JUDGE STROTHER: Very good, Mr.
5 Hinman.

6 WHEREUPON,

7 DONALD HINMAN

8 was called as a witness by Counsel for the
9 Agency, and after having been first duly sworn,
10 was examined and testified as follows:

11 JUDGE STROTHER: Your witness, Ms.
12 Chilukuri.

13 MS. CHILUKURI: Mr. Hinman, can you
14 state and spell your name for the record again.

15 THE WITNESS: I'm sorry, say it again,
16 please.

17 BY MS. CHILUKURI:

18 Q Yeah, so can you state and spell your
19 name for the record again?

20 A Yes, Donald Hinman, D-O-N-A-L-D H-I-N-
21 M-A-N.

22 Q And how long have you been with USDA?

1 A Nearly 20 years.

2 Q And what is your -- what is your title
3 at USDA?

4 A Economist.

5 Q So can you tell me more about what you
6 do at USDA?

7 A Yes, I do -- my job consists of
8 economic analysis. I do quite a bit of
9 compilation of data and reporting up the chain of
10 command on issues that affect regulations and
11 other things that AMS and Specialty Crops
12 undertakes.

13 Q Okay, have you participated in
14 hearings like this before, formal rulemaking
15 hearings?

16 A Yes.

17 Q And do you know how many times you've
18 done so?

19 A This is I think my, probably my sixth
20 formal rulemaking experience here.

21 Q And I understand that you have
22 prepared some documents for this hearing, is that

1 correct?

2 A That is correct.

3 Q Okay, so just so we have an
4 understanding of which exhibits we're going to be
5 looking at, is it exhibits 11, 12, and 13?

6 A Exhibit 11 is the written statement
7 now on the screen.

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

11 A And then Exhibit 12 is the table of
12 contents, tables 1-5. And Exhibit 13 is table 6
13 in the same data compilation.

14 Q Okay so will you be reading your
15 statement into the record?

16 A Yes, I will be reading the statement
17 out loud. And then I would suggest to the person
18 manning the -- that you could leave on the screen
19 there maybe for the first paragraph of this
20 statement. And as soon as I get to the second
21 paragraph, I'll be referring to individual, you
22 know, the exhibits. Maybe you should show those

1 pages one at a time as I refer to those pages and
2 tables.

3 So I will now begin reading the
4 statement.

5 Q One last question --

6 A Exhibit -- I'm now going to read from
7 Exhibit 11.

8 Q And did you personally prepare all of
9 these documents, Mr. Hinman?

10 A I did. I did, yes.

11 Q When you're ready, feel free to
12 proceed.

13 A Okay. My name is Donald Hinman. From
14 June 2001 to the present I have worked as an
15 Economist for the U.S. Department of Agriculture,
16 Agricultural Marketing Service, Specialty Crops
17 Program, Promotion and Economics Division.

18 My duties include preparing economic
19 and statistical analyses which are used by
20 government officials to help administer federal
21 programs of fruits, vegetables, and other
22 specialty crops. A large part of my work relates

1 to federal marketing orders.

2 Prior to working for the Agricultural
3 Marketing Service, I taught economics at a
4 University of Wisconsin campus in Superior,
5 Wisconsin.

6 And then if you could now show Exhibit
7 12.

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

11 THE WITNESS: For this hearing, I
12 prepared a data compilation with the title
13 California Walnut Statistics Seasons 2001 to
14 2018/19. One data source is the National
15 Agricultural Statistics Service of the U.S.
16 Department of Agriculture, referred to by its
17 acronym, NASS, or N-A-S-S. Two other USDA
18 sources are the Foreign Agricultural Service,
19 FAS, and the Economic Research Service, ERS.

20 The purpose of this testimony is to
21 introduce U.S. government data into the hearing
22 record. These tables are intended to be used by

1 all parties involved in the hearing in discussing
2 and analyzing the merits of various proposed
3 amendments.

4 Page one, this is now Exhibit 12, page
5 one shows a table of contents showing the six
6 tables. Now I'm going to turn to page two.

7 Table 1 on page two presents walnut acres, yield
8 production, grower price, crop value, and sales.

9 The columns are numbered from 1 to 7 to make it
10 easier to identify them.

11 Column 1, it says bearing acres. And
12 column 3 shows the quantity produced each year.
13 Column 2 in between shows average yield per acre,
14 and yield per acre in column 2 is computed by
15 dividing column 3 by column 1.

16 The quantity produced shown in column
17 3 is sold either shelled or in shell. Column 6
18 shows shelled sales and column 7 shows in-shell
19 sales. Adding shelled sales in column 6 and in-
20 shell sales in column 7 equals total utilized
21 production in column 3.

22 I'm now on the second page of my

1 written statement here, continuing to discuss
2 Table 1. Continuing to discuss table 1 on page
3 two. Column 1 shows that bearing acres increased
4 every year since the 2000-2001 season. Bearing
5 acres rose from 300,000 acres in 2015-16 to
6 365,000 acres in 2019-20.

7 Table 1, column 3 shows that utilized
8 production has exceeded 400,000 tons every year
9 since 2008 or '09, and it's been greater than
10 600,000 tons every year beginning in 2015-16.

11 Table 1, column 5 presents the crop
12 value. This exceeded \$1 billion from 2010-'11 to
13 2017-'18 and reached 1.9 billion in 2014-'15.
14 Walnut crop value dropped sharply, to about 879
15 million, in 2018-'19, a decline of 44 percent
16 from the prior year.

17 NASS estimates the season average
18 grower price received by growers shown in column
19 4 by dividing the crop value in column 5 by the
20 production quantity in column 3. The 2018-'19
21 price of 1,300 per ton was the lowest since 2008-
22 '09, and represented a 48 percent decline from

1 2017-'18.

2 Now I am turning to page three.

3 Walnut imports and export quantities, based on a
4 September to August marketing year, are presented
5 in tables 2 and 3 on page three. This data was
6 obtained from a USDA Foreign Agricultural Service
7 database known as GATS, spelled G-A-T-S. It
8 stands for Global Agricultural Trade System.

9 As with table 1, the quantities are
10 presented in units of 1,000 tons. However, the
11 shelled export and import numbers are not
12 converted to an in-shell basis.

13 Next I turn to page four. Both table
14 4 and table 5 on page four represent the number
15 of California walnut farms, which was 5,676 in
16 2017. This was published by NASS in the 2017
17 Agricultural Census. Table 4 divides the 5,676
18 farms into 12 ranges of acreage. The second row
19 of table 4 shows that there were 1,739 farms with
20 acreage anywhere from 10 to 49.9 acres,
21 representing 31 percent of the farms.

22 The last column in that row shows that

1 a cumulative percent of 53 percent. Cumulative
2 percent includes the percentages of previous
3 rows. This table shows that 53 percent of the
4 farms in 2017 had less than 50 acres of walnuts.
5 The second to last row of table 4 shows that 157
6 farms had 2,000 or more acres of walnuts,
7 representing 3 percent of all farms.

8 Table 5, continuing on page four,
9 divides the number of farms into 11 ranges of
10 farm sales. The seventh row of the cumulative
11 percent column shows the number of 56 percent in
12 the row with annual sales of 50,000 to \$99,999.
13 This means that over half the farms in 2017
14 earned less than 100,000 per year from walnut
15 sales.

16 The 14 percent figure at the bottom of
17 the percent of total column shows that 14 percent
18 of the farms earned one million or more from
19 walnut sales. Next I turn to page five, and this
20 is table 6, which is Exhibit 13.

21 (Whereupon, the above-referred to
22 document was marked as Exhibit 13 for

1 identification.)

2 THE WITNESS: Table 6 on page 5
3 presents supply and utilization data prepared by
4 the USDA's Economic Research Service. All
5 numbers are on a shelled basis in 1,000 pound
6 units, which is different from the units in
7 tables 1 through 3. Total supply is presented in
8 column 6. Total supply in column 6 is the sum of
9 the numbers in columns 3, 4, and 5, which are
10 marketable production, imports, and beginning
11 stocks.

12 Ending stocks and exports are shown in
13 columns 7 and 8. Taking total supply in column 6
14 and subtracting any stocks and exports equals
15 domestic utilization, presented in column 9.
16 Domestic utilization is an estimate of the
17 quantity of walnuts consumed within the U.S.
18 market.

19 Dividing domestic utilization in
20 column 9 by the U.S. population, which is not
21 shown in this table, yields the per capita
22 utilization number in column 10. U.S. per capita

1 utilization of walnuts, also known as per capita
2 consumption, has been close to one half pound per
3 person for many years.

4 This concludes my testimony. Thank
5 you.

6 JUDGE STROTHER: Sorry about that, I
7 muted myself. All right, at this time USDA has
8 the opportunity to examine the witness. Ms.
9 Chilukuri.

10 MS. CHILUKURI: All right, thank you,
11 your Honor. So, Mr. Hinman, do you have any
12 personal stake in the outcome of this hearing?

13 THE WITNESS: I do not. I'm neutral.

14 BY MS. CHILUKURI:

15 Q And in preparing this information, are
16 you taking any positions? Are you -- is it
17 information for the proponents or for the
18 opponents of the fence (phonetic) amendment?

19 A No, no position taken. This is --
20 data is supplied for any parties to the hearing
21 to use in discussing the merits of the proposal.

22 MS. CHILUKURI: Thank you, I have no

1 further questions.

2 JUDGE STROTHER: Okay. By the way,
3 Mr. Stroman, things coming through clearly for
4 the hearing reporter?

5 COURT REPORTER: Yes, your Honor.

6 JUDGE STROTHER: Very well. Have
7 there been any objections? I should have checked
8 during that. I take it nothing has come in in
9 the form of an objection. I certainly haven't
10 seen anything.

11 Very well, okay. It's the industry
12 proponents' opportunity now to examine this
13 witness.

14 Any questions from the industry proponents?

15 Hearing none, I guess the next
16 opportunity is for other participants through
17 Zoom to have an opportunity to question this
18 witness. Any hand raised, who's ever in charge
19 of that?

20 MS. HOAGLAND: No, there are no
21 objections via Zoom, but it looks like the
22 California Walnut Board said they're not able to

1 unmute.

2 JUDGE STROTHER: Okay. Can we unmute
3 the California Walnut Board, please?

4 MS. HOAGLAND: There are no hands
5 raised.

6 JUDGE STROTHER: I'd still like to
7 hear from the California Walnut Board. Okay,
8 you're unmuted.

9 MS. CONNELLY: We're here now, thank
10 you. No, we have no objections to the data as
11 presented.

12 JUDGE STROTHER: Do you have any
13 questions for this witness?

14 COURT REPORTER: Was that Ms.
15 Connelly? I'm sorry.

16 MS. CONNELLY: Yes, this is Connelly.

17 JUDGE STROTHER: Any questions? Do
18 you all have any objections? Do you have any
19 examination of this witness?

20 MS. CONNELLY: No, we do not.

21 JUDGE STROTHER: Okay. Anyone else on
22 Zoom that has any questions?

1 (No response.)

2 JUDGE STROTHER: All right. We turn
3 to those that are on this conference via
4 telephone. Anyone that is signed into this
5 conference via telephone have any examination for
6 this witness?

7 (No response.)

8 JUDGE STROTHER: Did anyone text
9 anyone or go through the mechanism that we set up
10 for doing that?

11 MR. KUMAR: I don't have any text or
12 any objections, we're good.

13 JUDGE STROTHER: Okay, very well. In
14 that case, we have three exhibits. I don't think
15 we need to go back over what they are, but
16 Exhibits 11, 12, and 13, does anyone have any
17 objections to putting those exhibits of this
18 witness into the record? I'll wait just a moment
19 on that as well.

20 Seeing and hearing none, Exhibits --
21 did somebody saying something? Okay. Hearing
22 none, Exhibits 11, 12, and 13 are admitted to the

1 record.

2 (Whereupon, the above-referred to
3 documents were received into evidence
4 as Exhibits 11, 12, and 13.)

5 JUDGE STROTHER: Anything further from
6 anyone before we let this witness stand down?

7 (No response.)

8 JUDGE STROTHER: Thank you for your
9 testimony, Mr. Hinman. You may virtually step
10 down from the witness stand.

11 DR. HINMAN: Thank you, Your Honor.

12 JUDGE STROTHER: Thank you, sir.
13 Okay. According to my records, the next witness
14 is Mr. Crain from the California Walnut Board.
15 Is someone going to act as an attorney in
16 connection with this witness, or are we just
17 going to talk directly to Mr. Crain? We need to
18 unmute Mr. Crain.

19 MS. CONNELLY: Judge, Mr. Crain is on
20 the audio conference line in our office here.
21 You should be able to hear him through our
22 speaker.

1 JUDGE STROTHER: Very well.

2 MR. CRAIN: Yes. Can you hear me now?

3 JUDGE STROTHER: Okay, Mr. Crain.

4 Would you raise your right hand, please?

5 WHEREUPON,

6 CHUCK CRAIN

7 was called for examination by Counsel for the

8 California Walnut Board, and having been first

9 duly sworn, assumed the witness stand, was

10 examined and testified as follows:

11 JUDGE STROTHER: Okay, the witness is

12 sworn. Is somebody going to introduce --

13 describe the exhibits, or should I do that? Or

14 should we just have Mr. Crain do that?

15 MR. CRAIN: I would be glad to do

16 that. We should have time to revisit the

17 PowerPoint presentation. I can't see it on the

18 screen currently. If someone could facilitate

19 that --

20 JUDGE STROTHER: I think it's coming

21 up now.

22 MR. HATCH: This is Andy Hatch. Can

1 everybody see the slides?

2 MS. CONNELLY: Yes, Andy.

3 MR. HATCH: Thank you.

4 MR. CRAIN: Yes, I can see the slides.

5 Very good. First of all, I was not able to
6 introduce myself earlier due to some technical
7 difficulties here. I'm using an audio signal
8 from a phone and a video from an iPad. I'll make
9 this work.

10 My name is Chuck Crain, C-H-U-C-K, C-
11 R-A-I-N. I'm the president of Crain Shelling,
12 which is a handler and processor of walnuts. Our
13 headquarters locally is in Los Molinos,
14 California. Los Molinos is a community which is
15 located in the northern Sacramento Valley about
16 two hours' drive north of the capital of
17 Sacramento.

18 I am testifying today as a large
19 handler of the California Walnut Commission, and
20 I serve on several marketing boards and Walnut
21 Commission committees.

22 I serve on the Market Order Revision

1 Committee, the Executive Committee, the Grades
2 and Standards Committee, as well as the Market
3 Development Committee. I'm going to give a
4 general industry overview as we start this
5 hearing.

6 JUDGE STROTHER: Very well. Let's
7 describe your exhibits. As I understand it, you
8 have three exhibits. Exhibit 14 is described as
9 your testimony. Is that what's on the screen
10 now, or is that Exhibit 15?

11 MR. HATCH: This is Andy Hatch --

12 (Simultaneous speaking.)

13 MR. CRAIN: The one on the screen
14 right now should be Exhibit 15.

15 JUDGE STROTHER: Okay. What is
16 Exhibit 14 then? Was that that short description
17 we had up there earlier?

18 MR. CRAIN: Exhibit 15 is a series of
19 PowerPoint slides for the purposes of helping me
20 walk through the industry overview with the
21 group.

22 JUDGE STROTHER: Exhibit 16 is what?

1 This 2018 sample costs to establish and produce
2 English Walnut Study.

3 MR. HATCH: This is Andy Hatch. I'll
4 show No. 16 right now.

5 MR. CRAIN: Thank you.

6 JUDGE STROTHER: Very well. Okay. I
7 think the -- we'll handle admission into evidence
8 after your testimony, so Mr. Crain, you may
9 proceed with your statement.

10 MR. CRAIN: Your Honor, I could not
11 hear your last sentence.

12 JUDGE STROTHER: Please proceed, Mr.
13 Crain, with your statement. Did you hear me that
14 time? Can you hear me at all? Can other people
15 hear me?

16 MR. CRAIN: Yes, I can hear you now.
17 I will prepare to start with the industry
18 overview.

19 JUDGE STROTHER: Please continue.

20 MR. CRAIN: Okay. We may proceed to
21 the next slide, please. The California walnut
22 industry is governed by the California Walnut

1 Board. The California Walnut Board was formed
2 via a federal marketing order that was
3 established in 1948 to represent growers and
4 handlers of walnuts.

5 The Board is funded by assessment at
6 \$4 per hundred weight of shelled kernels. This
7 assessment covers U.S. domestic marketing,
8 production and post-harvest research, grades and
9 standards, regulatory monitoring and support, as
10 well as industry education. It also provides for
11 a USDA oversight of the industry. Next slide,
12 please.

13 The California Walnut Board's
14 structure is that of a board of members and
15 officers, and also eight committees. The
16 committees are formed to help with the various
17 duties and make recommendations to the Board.

18 We have the Executive Committee,
19 Market Development Committee, Grades and
20 Standards Committee, Audit Committee, Diversity
21 Committee, Export Committee, Industry
22 Communications Committee, and the Marketing Order

1 Revision Committee.

2 These committees, again, do research
3 on the various tasks and make recommendations to
4 the Board for approval. Next slide, please.

5 This slide shows a pie chart of the
6 Walnut Board expenditures. As you can see,
7 approximately 80 percent of the total of
8 expenditures are used for domestic marketing.

9 COURT REPORTER: Sir, I'm having a
10 very difficult time hearing you.

11 MR. CRAIN: Okay. Let me see if I can
12 correct that. Is that better?

13 COURT REPORTER: Yes, a little bit.
14 I was just hearing some feedback, sorry.

15 MR. CRAIN: Okay. I will speak a
16 little bit slower and see if we can avoid that.
17 Next slide, please. Very good.

18 Now we'll talk a little bit about the
19 industry structure. The industry is comprised of
20 producers, processor/handlers, and customers.
21 The producers are the growers that grow the
22 products and sell products to the handlers.

1 The handlers acquire the product,
2 process it into a level that meets, or to a
3 product that meets USDA standards and can be
4 introduced into commerce, and the customer is the
5 purchaser of the final product. Next slide,
6 please.

7 As you can see in the bar graph
8 presented, the acreage in California is growing.
9 Here we have a bar graph showing bearing acreage
10 in the orange, as well as non-bearing acreage in
11 the yellow. As you can see, both the bearing and
12 non-bearing acreage is growing. Next slide,
13 please.

14 This next bar chart or graph shows the
15 growth of the California walnut crop. As you can
16 see, in 2009 it was a little over 400,000 short
17 tons, and in 2019 we had a crop above 650,000
18 short tons, which is awesome. The 2019 crop was
19 slightly larger than the 2018 crop, and that's
20 due to the fact that walnuts tend to have a
21 cyclical production tendency. Next slide,
22 please.

1 This bar graph clearly shows new
2 plantings for the year 2011 through 2017. The
3 years of 2014 and 2015 were emergency betterment
4 years for new plantings, and those are the result
5 of excellent grower returns in previous years.

6 Next slide, please.

7 This pie chart shows world production
8 of English walnuts, of which California walnuts
9 are a part. Walnuts that are marketed in
10 California are also referred to as English
11 walnuts, I did not mention that earlier for the
12 record. The largest producer in the world is
13 China, currently producing approximately 41
14 percent of the world's supply.

15 The second-largest producer is the
16 U.S., which for all practical purposes, is
17 California, with 31 percent of the world's
18 supply. The next most significant producer would
19 be Chile, with 7 percent of the world's
20 production. Next slide, please.

21 Okay. This next slide shows world
22 trade of walnuts, and just so you understand or

1 for the record, when I say world trade, I'm
2 talking about the commerce that has been outside
3 the borders of the country. The U.S. controls 57
4 percent of the world's commerce. China, even
5 though it's the world's largest producer, only
6 exports seven percent of its volume. Chile
7 controls 18 percent of the world's commerce,
8 Ukraine, 8 percent, France, 4 percent, and
9 others, 5 percent. Next slide, please.

10 This bar graph shows our major market
11 during the marketing year 2018 through 2019. As
12 you can see, the domestic market is by far the
13 largest at approximately 500 million pounds.
14 Germany is our largest export market overall,
15 followed by Turkey and the United Arab Emirates.
16 And as you can see, we have several other good
17 markets a little bit smaller in volume. Next
18 slide, please.

19 MR. HATCH: Can I -- this is Andy
20 Hatch. I'm trying to move to the next slide, and
21 it's -- there it goes.

22 MR. CRAIN: Pretty good. This next

1 slide shows the Central Valley of California
2 where walnuts are grown, as well as the top
3 counties where they're produced. These are the
4 10 largest-growing counties in order: San
5 Joaquin County is the largest, it's in the
6 central part of the state. Butte County is
7 Number 2, it is in the northern Sacramento
8 Valley. Stanislaus County is Number 3, it is
9 just below the center, bordering San Joaquin
10 County on the south.

11 Tulare County is in the far south,
12 nearby --- well it is by its ancillary county.
13 Sutter County is Number 5, it is in the northern
14 Sacramento Valley. Tehama County is in the
15 northern Sacramento Valley, Glenn County is in
16 the northern Sacramento Valley as well, as is
17 Yuba County.

18 Kings County is in the southern region
19 of the Central Valley, down near Tulare County,
20 and Colusa County, which is a quickly-growing
21 county in production is in the northern
22 Sacramento Valley. So as you can see, walnuts

1 are fairly well distributed through the main
2 growing regions in California. Next slide,
3 please.

4 The walnut industry in California
5 currently has 4,400 growers and 92
6 handler/processors. Next slide, please.

7 According to the USDA's National
8 Agricultural Statistics Service 2017 census,
9 approximately 65 percent of California walnut
10 farms were smaller than 100 acres. Further,
11 NASS reports that the average yield for the 2018
12 crop was 1.93 tons per acre, and the average
13 price received for 2018 was \$1,300 per ton.

14 A 100-acre farm with an average yield
15 of 1.93 tons per acre would therefore have been
16 expected to produce about 193 tons of walnuts.
17 At \$1,300 per ton, that farm's production would
18 have had an approximate value of \$250,900. This
19 is well below the SBA threshold of \$1 million,
20 but it can be concluded that the majority of
21 California's walnut growers are considered
22 smaller growers according to SBA's definition.

1 According to information supplied by
2 the industry, approximately 82 percent of
3 California's walnut handlers shipped merchantable
4 walnuts valued under \$30 million during the 2018-
5 2019 marketing year and would therefore be
6 considered small handlers according to the SBA
7 definition. Next slide, please.

8 This bar graph shows the market values
9 of the walnuts produced in California for the
10 year 2008 through the last completed year, 2018.
11 As you can see, we reached a peak in 2014, and we
12 have been in somewhat of a decline since then,
13 with a significant drop in 2018. Next slide,
14 please.

15 This slide shows the cost of
16 production and returns for the years 2006 through
17 2018, as reported by the UC Davis Cooperative
18 Extension. You will notice that some of the
19 columns on the right side of the chart are blank.
20 This is because there were no studies completed
21 by UC Davis during those years.

22 Of importance is the last line, 2018.

1 At the left you can see the average producer
2 price at \$1,300 per ton, average yield, 1.39 tons
3 per acre, and a gross return of \$2,509. UC Davis
4 indicated that the cost of production for the
5 average farm would be \$5,283 per acre, with a net
6 return of a loss of \$2,774 per acre, a very
7 severe loss for farmers at that time.

8 As you can see in the columns above
9 the net return per acre, even though we had some
10 losses, we had some very, very, good years in the
11 period of the study between the years of 2012 and
12 2013. This is indicative of a trend and a need
13 for expansion of the market for walnuts. Next
14 slide, please.

15 Okay. This slide shows the chart of
16 the cost to produce walnuts. Again, the average
17 yield of 1.93 tons per acre in 2018 is 3,860
18 pounds. Sample cost per acre is at the far right
19 is \$5,283. This was -- let's see, this was the
20 average. Next slide, please.

21 A little bit of background on the
22 farming of walnuts in California. Walnuts bloom

1 in California in March and April, and the growth
2 season will last until harvest which is generally
3 the first part of September. The earliest
4 varieties will start harvesting at that time, and
5 we will have a harvest in California as later
6 varieties mature, the harvest will last into
7 November.

8 During harvest the product will be
9 brought in from the field and it will be
10 processed by the grower. It will be hulled and
11 dried for preparation for delivery to the
12 handler/processor. Once the handler/processor
13 receives the goods, the processing and marketing
14 will start, which is normally about a 12-month
15 period. Next slide, please.

16 Okay. The industry operation/flow of
17 goods outlined in the slide, it starts with the
18 growing. We talked about the harvesting period,
19 the hulling and drying. The hulling and drying
20 process takes place normally within 24 hours of
21 the goods being harvested. The product will come
22 in from the field at about 25 percent moisture.

1 The walnuts will be -- the green husks
2 will be taken off, we call that a hull, and hence
3 the name hulling. The product is de-hulled and
4 dried to about 7 percent moisture.

5 Once it gets to 7 percent moisture it
6 is considered to be stable and is then ready to
7 be shipped to the processor for processing. The
8 product will be received, shelled if it's a
9 shelling variety. It will be cleaned and sized
10 if it is an unshelled variety, and put into
11 storage. And then during the marketing year, the
12 product will be shipped and distributed to
13 customers. Next slide, please.

14 The walnut crop has a shelf life of
15 approximately 12 months from the time the product
16 is shelled. Approximately 75 percent of the
17 California walnut crop will be sold in the kernel
18 form. The remaining approximate 25 percent of
19 the crop is sold in the unshelled form. Cold
20 storage enables the industry to control inventory
21 and market on a year-round basis.

22 Advances in processing and package

1 technologies continue to improve product quality,
2 consistency, and shelf life. Next slide.

3 Walnuts are the fifth leading export
4 from California. 66 percent of the crop is
5 exported. The U.S. domestic market is our
6 largest market, and the industry provides 85,000
7 jobs directly and indirectly. I am testifying
8 today in support of the California Walnut Board's
9 proposed changes to Marketing Order 984. That
10 concludes my presentation. I apologize for any
11 problems with the audio and the video, but I
12 think it worked pretty well.

13 JUDGE STROTHER: Sorry about that.
14 Thank you. In accordance with the procedures we
15 established, the USDA goes first as to any
16 examination of this witness. Counsel, Ms.
17 Chilukuri?

18 MS. CHILUKURI: Thank you, Your Honor.
19 I'll let -- I'll defer to AMS and let them
20 proceed first.

21 JUDGE STROTHER: Okay. AMS, you're
22 up. First direct examination of this witness,

1 Mr. Crain.

2 MS. SCHMAEDICK: This is Melissa
3 Schmaedick with USDA. May I?

4 JUDGE STROTHER: Yes, you may.

5 MS. SCHMAEDICK: Thank you. Good
6 morning, Mr. Crain.

7 MR. CRAIN: Good morning.

8 MS. SCHMAEDICK: This is a very unique
9 time frame that we are meeting, so I'll try to
10 pose my questions and refer to the slides in your
11 Exhibit 15, and let's see if we can make this
12 work.

13 BY MS. SCHMAEDICK:

14 Q My first question is just a
15 clarification question. I believe you also
16 entered in an exhibit called Exhibit 16, which is
17 a study, sample costs. It looks like it was done
18 by the University of California Cooperative
19 Extension Service. Is that right? Can you hear
20 me?

21 A Yes, I can. That is correct.

22 Q Okay. So you didn't speak directly to

1 this study, but you're wanting to include this as
2 part of your supporting documentation. Is that
3 correct?

4 A That is correct. I wanted to include
5 it as supporting documentation because it is
6 footnoted in my PowerPoint slides, and some of my
7 cost projections are referenced in those slides.
8 They support the fact that returns to growers
9 have, as of recent, been below the cost of
10 production.

11 Q I did notice that it was referenced at
12 the bottom of a number of your slides, so thank
13 you for clarifying that. So with my questions
14 I'd like to just start from, it looks like it's
15 slide number 3. Actually, it's like slide number
16 4, the California Walnut Board.

17 I'm not -- the first bullet point, you
18 mention handlers, but then in parentheses you
19 have processors. So my question is: are those
20 two different entities within your industry? Do
21 they have two distinct functions, or are these
22 two terms interchangeable?

1 A The two terms are interchangeable.

2 Q So when, further on in your slide
3 speaking of the hulling and drying process, and
4 then the "processing," is that always done by the
5 same entity, or do you have entities that
6 specifically conduct one of those two functions?

7 A That's a very good question. The
8 hulling and drying process is the responsibility
9 of the grower or producer. Walnuts in California
10 are purchased from the producer in the hulled and
11 dried state, so those entities that perform that
12 task are either owned by the producer or they are
13 contracted to be done by the producer prior to
14 delivery to the handler/processor.

15 Q So the handler/processor function
16 essentially starts from the point where the
17 entities receive the hulled and dried products.
18 Is that correct?

19 A Could you repeat that question? I had
20 a little bit of background noise.

21 Q Sure. I'm trying to clarify at which
22 point in the process the "handling" begins. So

1 if I'm understanding you correctly, the handler
2 receives product from the grower after it has
3 been hulled and dried. Is that correct?

4 A That is correct.

5 Q Okay. So any handler activity is
6 post-hulling and drying.

7 A That is correct.

8 Q Okay. My next question is on the
9 second bullet point. You talk about the Board
10 being funded by an assessment of four cents per
11 hundred weight. Is that a constant assessment
12 rate, or does that change over time?

13 A The rate will change over time, and it
14 is determined by the Board.

15 Q Okay. And I'm just curious, for what
16 type of reasons would you change that assessment
17 rate?

18 A The Board needs to see a three year
19 projection of production, and it determines
20 approximately what the expenditures will be
21 during that year. And the assessment rate is
22 determined, which would be then multiplied times

1 the proposed or anticipated volume to cover those
2 costs. So it's for this reason that the rate
3 would be changed from time to time.

4 Q And you say just in generic terms,
5 assessment, who actually pays those assessments?
6 Who is responsible for paying those assessments?

7 A This assessment is paid by the
8 handler/processor.

9 Q I see. And I'm just curious, would
10 you say that because the assessments are
11 collected on a per-unit basis, per hundred-weight
12 basis, how does that impact a small handler
13 versus a large handler? Would you say that they
14 are paying a similar burden, or is it drastically
15 different?

16 A This would be interpreted -- I would
17 interpret it as a similar burden except that
18 based on the volume, that the grower is shipping
19 and putting it into commerce.

20 Q I'm sorry, you said grower. Did you
21 mean to say handler?

22 A I meant to say handler/processor, yes.

1 MS. SCHMAEDICK: Thank you. I'm
2 moving on to your slide that's titled CWB
3 Structure --

4 MS. HOAGLAND: Excuse me, sorry. Hi,
5 this is Erin Hoagland. It looks like we may have
6 an objection from an attendee named John on Zoom.
7 I'm trying to confirm that it's an objection, but
8 haven't received a response, so I'll go ahead and
9 unmute John, if that's okay.

10 MR. HATCH: Yes.

11 MS. HOAGLAND: Okay.

12 JUDGE STROTHER: Okay, John, you've
13 been unmuted. You had raised a hand or indicated
14 that you wanted to say something. First,
15 identify yourself, please. I have no video for
16 John. Do we have any other information as to who
17 John may be?

18 MS. HOAGLAND: No, I do not.

19 JUDGE STROTHER: John, if you're
20 there, can you at least acknowledge that you can
21 hear us? I didn't hear that. If Participant
22 John said something, I didn't catch it. Okay.

1 Hearing nothing -- I'm sorry.

2 MS. SCHMAEDICK: This is Melissa
3 Schmaedick with USDA. Perhaps John could use the
4 text number to communicate his basis for
5 objection.

6 JUDGE STROTHER: Well we're not sure
7 it was an objection, I guess. But again, I'll
8 give the text number again. The number to text
9 requests or objections to us is 559-290-0571.
10 With that, let's return to the witness.

11 BY MS. SCHMAEDICK:

12 Q Thank you, Judge. And this is Melissa
13 Schmaedick, USDA. So turning to the slide titled
14 CWB Structure, Mr. Crain, when you were
15 testifying to this, you referenced the number of
16 subcommittees. Do you participate in any of
17 those subcommittees?

18 A I participate in the Executive
19 Committee, the Market Development Committee, the
20 Grades and Standards Committee, and the Marketing
21 Order Revision Committee.

22 Q Thank you. Is the Marketing Order

1 Revision Committee the committee that was
2 organized to discuss and explore the amendments
3 that were essentially recommended by the Board?

4 A Yes. It was.

5 Q And did you participate in those
6 discussions?

7 A Yes. I did.

8 Q Can you describe the process by which
9 you participated? For example, were there
10 several meetings? Can you describe for us how
11 many people were involved and the representation
12 of stakeholders that were included in the
13 meetings? Could you describe that for us,
14 please?

15 A Sure. The Marketing Oder Revision
16 Committee has periodic meetings. During one of
17 the general meetings, the topic was discussed of
18 how we might make improvements to the domestic
19 marketing program. And the Marketing Order
20 Revision Committee also receives information from
21 other committees which largely gave direction,
22 and the Market Development Committee, which I am

1 also a participant in, was looking at ways to
2 enhance the merchantability or increase the
3 margin for California walnuts.

4 And there are several members of the
5 Market Development Committee that are also on the
6 Marketing Order Revision Committee, and the
7 direction was discussed as to how we might
8 proceed with a credit-back program or modifying
9 potentially the Marketing Order to enhance our
10 ability to be able to grow the market for
11 California walnuts.

12 And the burden of that investigation
13 hopefully goes to the Marketing Order Revision
14 Committee where the research was done as to how
15 we might do that. So it was driven largely by
16 market development, which had some intermediate
17 term planning sessions, created the direction,
18 and then the Marketing Order Revision Committee
19 was advised to investigate that to help the
20 Marketing Order so that it might be modified to
21 achieve this goal.

22 Q Thank you. I'm also curious about the

1 scope of stakeholders that were included in that
2 Marketing Order Revision Committee. In your
3 opinion, did they broadly represent all
4 stakeholders in the industry?

5 A Yes, it did involve all stakeholders.
6 The committee is comprised of grower/producers as
7 well as processor/handlers, so we have a good,
8 broad representation of the industry on the
9 committee.

10 Q Does that include large and small
11 businesses?

12 A Could you repeat the question?

13 Q Does your representation also include
14 members representing large and small businesses?

15 A Yes. It does.

16 Q Thank you. And I'm curious, does the
17 Marketing Order Revision Committee make a
18 recommendation to the Board on how they should
19 proceed?

20 A The Marketing Order Revision Committee
21 would do the research as to what would need to be
22 done to start the process, and then we'd make a

1 recommendation to the Board for approval by the
2 Board.

3 Q So does that mean that the Board
4 ultimately makes a recommendation?

5 A That would mean that it requires --
6 yes. The Board is actually approving the
7 process, and the Board has to approve the process
8 before we can proceed. The committees do not act
9 by themselves.

10 Q I am moving on to your slide titled
11 California Walnut Production as a bar graph, and
12 it has the crop year and short tons, short tons
13 on the Y axis, and crop year on the X axis.

14 And I think that this data may
15 correspond with our previous witness' data as
16 well. Mr. Hinman had a table showing a short
17 crop in '17-18, and then in '18-19. Can you
18 explain -- is this a representation of the
19 cyclical crop production that you spoke of, or
20 are there other reasons why these years in
21 particular were so short?

22 A Well there are several reasons.

1 Number one, you have weather conditions that
2 would affect the cropping and the set of the
3 crop. One year could be better than the next,
4 which would contribute to the crop size. You
5 have climatic conditions throughout the growing
6 season that might create fungus or other issues
7 that might damage the crop and cause it to fall
8 from the tress prior to harvest.

9 You also have tendencies with walnut
10 trees where they tend to have an alternate-
11 bearing characteristic. Alternate bearing is
12 normally lower per pound as trees age, and prior
13 to 2009, alternate bearing was a much more
14 significant impact to the crop because we had on
15 average trees that were producing in California
16 were getting a little older.

17 With a very recent increase in new
18 plantings, the average age of producing trees in
19 California has dropped, and juvenile trees tend
20 to have less alternate bearing tendency than
21 mature trees. So we don't see near the
22 characteristic that we have in the past, but it

1 is -- you can clearly see on the graph that the
2 '17 crop was less than '15, and that bounced a
3 little bit up '18, and now it's back down a
4 little bit in '19.

5 Whether that was all alternate bearing
6 or weather is really unknown. Walnuts are grown
7 under a large geographic area here in California,
8 and some regions will have better weather than
9 other regions in any particular year.

10 But anyway the two main factors are
11 alternate bearing characteristic and weather that
12 would affect the smaller crops in '17 and '19.

13 COURT REPORTER: I'm so sorry to
14 interrupt, Judge, but could we please take a one-
15 to two-minute comfort break?

16 (Simultaneous speaking.)

17 JUDGE STROTHER: I keep doing that.
18 Yes, why don't we take a 10-minute break. We
19 started at 8:00, but then we went on the record,
20 but it looks like it's 20 of 11:00 in California.
21 Why don't we come back at -- it's actually about
22 23 -- why don't we come back at five minutes to

1 11:00?

2 While I have you before we break, what
3 do you think we need to do about Participant
4 John?

5 MS. HOAGLAND: John is messaging in
6 the group chat. It looks like he actually has a
7 question, not an objection, so I told him that we
8 would wait until we open up the questions for
9 Zoom participants, and I'll let you know.

10 JUDGE STROTHER: Okay. Very well.
11 All right, let's go off the record until five of
12 11:00 Pacific Time.

13 (Whereupon, the above-entitled matter
14 went off the record at 1:42 p.m. and resumed at
15 1:56 p.m.)

16 JUDGE STROTHER: Okay. Back on the
17 record. It's 10:55 Pacific Time. We're trying
18 to finish Crain. Mr. Crain, you're still under
19 oath.

20 Do we have any preliminary matters we
21 should take up before we go back to Mr. Crain's
22 examination?

1 MR. DAVIS: The only thing I would
2 just like to suggest that possibly less
3 presented. Mr. Crain, if you could just double
4 check that you have no other devices of any kind
5 close to where you're sitting that would
6 potentially capture any noise in that room. That
7 might cut back on some of the feedback that is
8 still evident.

9 I show Mr. Crain's microphone is still
10 muted. Is that what you have Andy?

11 MR. HATCH: I'm pulling up his
12 documents. One second.

13 MS. CHILUKURI: And while we're
14 waiting, I just wanted to let everyone know that
15 in the chat box, I included the links to where
16 the Exhibits are online. Where they are seen.

17 (Telephonic interference)

18 JUDGE STROTHER: I'm sorry. Could you
19 repeat that, please? I had trouble hearing you
20 over the feedback.

21 MS. CHILUKURI: Sure. This is Rupa
22 Chilukuri. I don't know if we're back on with

1 this stuff. But, I just wanted to say --

2 (Simultaneous speaking)

3 JUDGE STROTHER: Go ahead.

4 MS. CHILUKURI: Sorry. Sorry. I just
5 wanted to say that the text number is in the Zoom
6 chat, as are the links to where the Exhibits are
7 located on the AMS website and the hearing ground
8 rules.

9 So, if anybody is having some
10 difficulty with the screen share, and want to see
11 something bigger, they can go to those websites.
12 To that website.

13 JUDGE STROTHER: Okay. The chat
14 indicates that the California Walnut Board is
15 muted. Do you want to take them off?

16 MR. HATCH: I just clicked unmute.
17 This is Andy Hatch.

18 MS. CHILUKURI: Thank you, Andy. Mr.
19 Crain is joining us via phone.

20 MS. HOAGLAND: Andy, who is -- who's
21 answering the text messages?

22 MR. HATCH: Pushpinder Kumar at the

1 USDA office.

2 JUDGE STROTHER: Okay. I think we're
3 back to you, Mr. Crain, and your examination,
4 USDA.

5 MS. SCHMAEDICK: Thank you, Judge.
6 This is Melissa Schmaedick again with the USDA.
7 Mr. Crain, are you ready to continue?

8 (No response.)

9 MS. SCHMAEDICK: Can Mr. Crain hear
10 me?

11 JUDGE STROTHER: I actually don't see
12 him on my screen anymore.

13 MS. CONNELLY: Chuck, are you there?

14 MR. MACTAVISH: I guess he's still
15 muted.

16 MR. DAVIS: Correct. I can see his
17 video screen just fine. The ceiling fan behind
18 him. He's talking into a cell phone.

19 MS. CONNELLY: Yes. And he was joined
20 via our teleconference line. So, I'm just trying
21 to -- Chuck are you there? Just confirming
22 you're on the call.

1 MR. CRAIN: Yes, Michelle.

2 MS. CONNELLY: Ah, perfect. Thank
3 you.

4 MS. SCHMAEDICK: Okay. So, Mr. Crain,
5 can you hear me? This is Melissa with USDA.

6 MR. CRAIN: Yes, Melissa. I can hear
7 you.

8 BY MS. SCHMAEDICK:

9 Q Okay. Thank you. So, continuing with
10 my questioning. I'm looking at your
11 presentation. I'm looking at the slide entitled
12 New Planting.

13 And there are a couple of questions
14 here. The first is, how long does it take until
15 a tree bears fruit?

16 A The first fruit is probably produced
17 on a young walnut tree at age four. Age five is
18 the year we consider walnuts to be coming into
19 production, or their first year of production at
20 age five.

21 Q Okay. So, five years then. Okay.

22 A That's correct.

1 Q Okay. And I also see that the new
2 planting first started to decrease, this
3 particular chart goes to 2017. Do you know if
4 that trend has continued?

5 Or has the new -- have the new
6 plantings begun to increase again?

7 A New plantings have remained consistent
8 about stable with the 2017 level that you see
9 there. Part of the planting is a function of
10 contracting for the trees.

11 And tree contracting to plant takes
12 place one to two years in advance of planting.
13 So, it is normal to see a continuance of
14 planting, even after the time which market prices
15 drop and growers might otherwise not want to
16 plant.

17 So anyway, it's -- the penalty to drop
18 is relative to, somewhat to market prices.
19 Growers that can get out of those contracts will,
20 and plant fewer acres.

21 Q Okay. So, then if I'm understanding
22 you correctly, there's this delay that say for

1 example, if producers are encouraged to plant
2 more trees because of strong market prices, they
3 plant the contract to order those trees. And
4 then they receive those trees two years later.

5 Is that how it works?

6 A One to two years. It depends on the
7 type of nursery stock. The industry has changed
8 drastically over the last ten years. Right now
9 we're in a period of time where a lot of clonal
10 type things are going into the ground.

11 A grower can contract for clonal
12 trees. But it would take a one year advance to
13 tear into a contract. If a grower wants to plant
14 two year old bare root trees, it's a two year
15 process. One year to grow the root stock, the
16 second year to graft the tree and grow the top.

17 So, basically you would tend to see a
18 delay on a ramp up, and also a delay ramping
19 down.

20 Q Okay.

21 A Hope that answers your question.

22 Q Yeah. It was, thank you. My last

1 question then is, do you have any measurement of
2 trees going out of production?

3 And my question, what I'm trying to
4 assess is, are these new plantings in effect, you
5 know, increasing the overall bearing acres within
6 the industry?

7 Or are some of the new plantings being
8 offset by older trees being taken out of
9 production?

10 A Some of the new plantings will offset
11 old orchards going out of production. We do not
12 have good numbers on what is actually going out
13 of production.

14 We make estimates in the industry.
15 But we don't have any mandatory reporting.

16 Q Okay. Thank you. So, based on your
17 knowledge, would you say that overall plantings
18 are still increasing within the industry, in
19 spite of the trees that are coming out of
20 production?

21 A Yes. I would say that trees are
22 growing in at about three times the volume as

1 what is coming out.

2 Q I see. Thank you. Okay. I'm looking
3 at your slide entitled top markets. It's a bar
4 graph again, top markets, parens marketing year
5 2018 through '19.

6 And I see that the U.S. is your top
7 market. In your opinion, is there room for
8 growth and demand in the United States?

9 A Yes. We see a significant potential
10 for expanse in the U.S. market.

11 Q Will there be another witness that I
12 can speak to how that growth is, I guess, being
13 estimated at this point?

14 A Well, we -- at the industry we have
15 conclusions and have third parties review the
16 potential. And that is being done through an
17 analysis of a current marketing, domestic
18 marketing program.

19 And the information that we have
20 indicates that over the years we've only
21 penetrated 40 percent of U.S. households with our
22 message.

1 Q Thank you. Is there someone who will
2 be speaking about estimates at a further time
3 during this process?

4 A Yes.

5 Q All right. Let's see, now I'm looking
6 at your slide that says, farm fresh hammer size,
7 SBA definitions. And when I look at this
8 information and I compare it with the information
9 that was presented by Mr. Hinman, I believe it
10 was Exhibit 12, tables four and five, based on
11 your personal knowledge and experience with the
12 industry, do these numbers accurately reflect the
13 distribution of small entities and large entities
14 within your industry?

15 A Yes. They do.

16 Q Now, I'm on your slide entitled, farm
17 gate value. And you pointed out on this bar
18 chart here that there was a significant dip in
19 '15 and again in '18. But you didn't give us any
20 indication as to why there was that significant
21 dip.

22 Do you have an opinion on why the farm

1 value fell as much as it did?

2 A There are two reasons why farm gate
3 values have dropped. Most recently in with the
4 2018 volume there, or value, that was relative to
5 the overall supply and the microeconomic issues
6 around the world.

7 We were suffering from some trade
8 barriers, predominantly those from China and
9 India. These trade barriers were, resulted in a
10 -- they were basically the result of
11 countervailing duties being imposed on walnuts in
12 India and China as a result of the current
13 administration's imposition of an increased duty
14 on steel and aluminum being produced in those
15 countries.

16 The duties increased significantly
17 thus reducing the demand in those major markets.
18 The reduction in demand increased the marketable
19 supply in the other markets because the best
20 place volume had to be put into the remaining
21 markets.

22 So, we ended up with basically too

1 much volume and not enough demand.

2 Q I see. So, done on this. Okay. And
3 for 2015, is there anything significant that
4 happened in that year?

5 A You know, specific issues in 2015, I
6 would have to go back and look. But, we had a
7 very large crop in 2014, which created a little
8 bit of oversupply going into the 2015 year.

9 But I don't -- I'd have to go back and
10 study that specifically.

11 Q Okay. Thank you. Now I believe my
12 last question, or almost last question, on your
13 slide that's entitled University of California,
14 dash cost to produce walnuts. In that table, in
15 the third column, the column heading is, sample
16 yield that is closest to map yield.

17 And then it says table five, column
18 two. Which table five in column two are you
19 referring to? I mean, I wasn't able to figure
20 that one out.

21 A Okay. Table five, column two. That
22 comes to -- see micro-cluster just one second.

1 Q If you see a -- it says source
2 typified that something analysis walnuts cost per
3 acre. Does this refer to in table five, column
4 two in the university study that you are also
5 including as an exhibit?

6 A Yes, it does. This is the 2018 ANR UC
7 Davis cost study.

8 Q I see. Okay. Okay. My apologies, I
9 didn't take the time to cross that.

10 MR. HATCH: This is Andy Hatch, would
11 you like me to pull that document up alongside
12 the PowerPoint slide?

13 MS. SCHMAEDICK: No. I don't believe
14 that's necessary. Thank you for asking. And I
15 believe that concludes my questions for the time
16 being.

17 Thank you, Mr. Crain.

18 JUDGE STROTHER: Then following our
19 procedure, then the next up is the industry
20 proponents.

21 MS. VAWTER: Your Honor?

22 JUDGE STROTHER: Who is asking me?

1 MS. VAWTER: Terry Vawter. I have a
2 question, if I may?

3 JUDGE STROTHER: All right. That's
4 why we have more than one questioner possible
5 from USDA. Yes, Ms. Vawter, your witness.

6 MS. VAWTER: May I ask Mr. Crain about
7 this statement about trees being pulled out? Is
8 it safe to say that trees maybe pulled out and
9 not replaced by walnut trees, but there are other
10 cases in which older walnut trees or a bad
11 variety is being called, pulled out and replaced
12 by walnut trees?

13 MR. CRAIN: Yes. That's a good
14 question. There is a possibility that walnut
15 trees are pulled out and replaced with other
16 crops. And this will happen from time to time.

17 You will also have the incidents where
18 older, less productive varieties will be pulled
19 out and subsequently replaced with newer, higher
20 grade varieties.

21 MS. VAWTER: Thank you. And you don't
22 actually have data on what percentage might be --

1 what percent of -- percentage of whole trees
2 might be replaced by other walnuts?

3 MR. CRAIN: That information is not
4 available.

5 MS. VAWTER: Thank you so much.

6 JUDGE STROTHER: Okay. Any further
7 examination? Mr. Hinman?

8 DR. HINMAN: Yes. Mr. Crain, thank
9 you for your testimony. Andy, could you put up
10 my Exhibits with the, you know, the tables one
11 through five. And then go to the second page.

12 JUDGE STROTHER: It's Exhibit 12 for
13 the record.

14 MR. HATCH: Thank you, Your Honor.

15 DR. HINMAN: Exhibit 12 and then table
16 one. And Mr. Crain, when he gets it up, I'm
17 going to ask you a question about that table.
18 So, if you want to be looking at that Exhibit as
19 well.

20 And I'm referring to your production
21 in the forecast production 2019 will be my
22 question. But, we'll wait until the Exhibit is

1 on the screen, Mr. Crain.

2 Okay. And then next page. So, Mr.
3 Crain, can you see it yourself? Or do you -- do
4 you have it on the screen or in front of you?
5 The table?

6 MR. CRAIN: I have it on the screen in
7 front of me.

8 BY DR. HINMAN:

9 Q Okay. And at the bottom of that,
10 2019-20. 2019 crop was a forecast from before
11 the harvest. And it shows 130 thousand tons
12 with, you know, the harvest is complete.

13 So, I imagine the Walnut Board has an
14 updated figure. Can you give an approximate
15 figure for what the estimate of the crop is for
16 2019?

17 A Yes. The final number statement is
18 650 thousand tons.

19 Q 6-5-0? 650 thousand?

20 A That is correct. Slightly larger than
21 the estimates.

22 Q Perfect. Okay, good. Now, I

1 appreciate that clarification. If you go, let's
2 go back to Mr. Crain's slide and look at slide
3 19. That is the cost of production and returns
4 table.

5 And in that cost of production and
6 return table, in your slide 19, the last row is
7 for 2018. And I just want to clarify that. So,
8 that cost of production per acre of 5,533, was
9 obtained from your exit -- Exhibit 16, the 2018
10 study. Is that correct?

11 A Okay. Cost of production retained,
12 2018. Okay. Let's see, the equipment was
13 regarding cost of production.

14 Q Right.

15 A That's in the column from the right.

16 Q That came off of your Exhibit 18 --
17 your Exhibit 16, right?

18 A That's correct.

19 Q And then all the previous ones came
20 with equivalents from the years before. Is that
21 correct?

22 A That is correct.

1 Q Okay. Now, you already commented on
2 that. I just want to give you a chance to say a
3 bit more. We're looking -- related to the
4 decline in profitability.

5 You mentioned it in relation to Ms.
6 Schmaedick's questions. But it is, it's pretty
7 clear that you mentioned before, you know, you
8 have that range of, you know, two thousand
9 dollars in -- you know, exit profits in the range
10 of more than two thousand dollars. And then have
11 losses in the range of well over two thousand
12 dollars.

13 Again, many reasons for that were what
14 you just said that, you know, Chinese check --
15 you know, various tariffs made certain markets
16 evaporate or decline dramatically.

17 Do you have any other comments on the
18 reasons for the dramatic decline between your
19 lowest -- the high profit years and the current
20 low profit year?

21 A Well, the other major factor that we
22 see is that we have not been able to get any

1 significant increase in growth in the domestic
2 market, the U.S. domestic market, which is our
3 largest market.

4 And that's one of the reasons why
5 we're trying to, we've approached the USDA for
6 the potentiality of modifying the market order to
7 allow for us to credit back possibilities to
8 potentially enhance the growth of that market.

9 That's the other feature, contributing
10 factor to, you know, to the oversupply.

11 Q Okay. Thank you. If you could turn
12 to your slide 24. That's the slide with the
13 figures. And that's, I just wanted to ask, of
14 the 85 thousand jobs directly and indirectly, can
15 you tell me how that was computed?

16 What is the source of that? You know,
17 what kind of study was done to create that,
18 estimate that jobs figure? The 85 thousand jobs?

19 A Well, you know, I don't have that
20 information in front of me. But if Rachael can
21 give you in subsequent testimony, we'll be able
22 to reveal that information.

1 Q Okay. Great. Thank you. Just a few
2 more questions here. I did want to thank you for
3 identifying yourself at the outset as a larger
4 handler. And I guess, I take it that Crain
5 Orchards is a large grower in the SBA definition.

6 A Could you repeat that question?

7 Q Yes. You helpfully identified
8 yourself as a larger handler in your opening
9 statement there. But, you know, is Crain
10 Orchards, Cain Shelling, is it also part of Crain
11 Orchards?

12 Is Crain Orchards a large growing
13 operation in the SBA, in the Small Business
14 Administration's definitions of over one million
15 dollars per year?

16 A Yes.

17 Q So, you are a large grower and a large
18 handler?

19 A The bulk, the shelling and Crain
20 Orchards, the farming operation would be
21 considered under SBA definition as a larger
22 handler and a large grower.

1 Q Okay. Great. Thank you. And then
2 I've got a few questions that I'm going to ask of
3 every grower and handler when there's that.

4 And considering this market is very
5 helpful on the record for each witness to state
6 their views in terms of your using the phrase,
7 benefits and costs. If you could state your view
8 of the benefits of the proposed amendments.

9 And it embraces your view from, and
10 then your views of the cost and the extent to
11 which you think do the benefits outweigh the
12 costs, you know, if any costs? Or is this
13 nationally so?

14 So, if you could just say, phrase a
15 response in terms of benefits and costs of this
16 amendment, these amendments.

17 A I really don't see it as a cost. The
18 benefits are that handlers will be using more of
19 their own capital, and will be incentivized to do
20 so to standard marketing efforts.

21 And they will give a small portion of
22 their contribution, send it back for their

1 efforts. So, I see benefit only and no cost.

2 DR. HINMAN: Great. Okay. Those are
3 all my questions. Thank you.

4 JUDGE STROTHER: Does that complete --
5 oops, I'm awful at this. Does that complete the
6 examination by USDA?

7 MS. CHILUKURI: Your Honor, this is
8 Rupa Chilukuri. I have a few questions.

9 JUDGE STROTHER: Please.

10 MS. CHILUKURI: Thank you. Mr. Crain,
11 on one of your slides, it indicates that 80
12 percent of assessment dollars are spent on
13 domestic marketing.

14 Can you talk a little bit more on what
15 specifically that means? And what those dollars
16 are going towards?

17 MR. CRAIN: Yes. They're domestic
18 promotional activities. There will be press
19 communications, then promotional activities,
20 there will be development of recipes, development
21 of potential climates that might be introduced
22 into the trade that might be attractive to food

1 manufacturers who might want to be looking for,
2 who might be looking for a new item.

3 It's a fairly significant PR and
4 advertising set up. Very well rounded, I
5 believe.

6 BY MS. CHILUKURI:

7 Q Okay. Thank you. You also, I think,
8 in one of your slides had indicated that there's
9 a 500 million dollar trade, I guess walnuts are a
10 500 million dollar trade in the US.

11 Can you talk more about the different
12 outlets that would entail? Is that direct to
13 consumer? Is that -- just which portions of the
14 market are getting those walnuts and how are they
15 using that in a broader sense?

16 A I think you're referring to a bar
17 graph showing 500 million pounds of product
18 approximately going into the domestic market.

19 Q Yes.

20 A Okay. The mass majority of that
21 product is going into the market in the form of
22 kernels. The industry is looking for ways to

1 expand the uses of walnuts in the American diet.

2 Walnuts are perceived to be a very
3 healthy food. A plant-based protein. And we're
4 trying to -- we think that the industry that we
5 need to expand the uses of the product to expand
6 consumption.

7 And to appeal to a wider group of
8 consumers. Currently the two major segments of
9 the business are food service, retail sales,
10 where the product is shipped out and sold in the
11 form of a retail bag to the consumer.

12 And then what we call an industrial
13 increasing application where the product is
14 shipped out and used by food manufacturers to
15 make brownies and pastries and so forth.

16 We are -- most of the walnut uses are,
17 you know, a very narrow group of uses that we
18 think that we need to expand that. And hence the
19 reason for our push to try to modify the order
20 and incentivize the handlers to look into
21 different ways to merchandise the product.

22 Q All right. Thank you. And one final

1 question is, this -- this is to ask you about
2 stakeholder input as it relates to the proposed
3 amendment.

4 Can you talk a little bit more about
5 the outreach that the Board and -- that the Board
6 conducted?

7 A Could you repeat the question please?
8 I got a little background noise.

9 Q Sure. I was just asking, can you tell
10 us a little bit more about the outreach that the
11 Board conducted in seeking feedback on the
12 proposed amendment?

13 And in developing and formulating the
14 proposed amendment in the first instance?

15 A Well, I would have to defer to
16 Michelle Connelly later in the testimony to
17 answer that question.

18 MS. CHILUKURI: Okay. Thank you. I
19 have no further questions.

20 JUDGE STROTHER: Okay. Anything
21 further from USDA at this time?

22 (No response.)

1 JUDGE STROTHER: Okay. The time has
2 come for industry proponents, time to examine
3 this witness.

4 MS. CONNELLY: Thank you, Judge. This
5 is Michelle Connelly. I have no comments. Is
6 industry on the phone?

7 (No response.)

8 MS. CONNELLY: I think we're good to
9 move on, Judge.

10 JUDGE STROTHER: Okay. Next we turn
11 to other participants that are participating
12 through Zoom. I'm not sure whether we got a chat
13 message from a John MacTavish, who is a grower.

14 I can't tell whether he's coming in by
15 telephone or by Zoom. If he's there, we can have
16 him go.

17 MS. HOAGLAND: Hi Judge. We --
18 someone has a question who sent it through text
19 message. I think it maybe John. But, they
20 didn't indicate their first and last name. The
21 telephone number is (530) 519-7892.

22 So, maybe if we could unmute the

1 telephone line, that caller could ask their
2 question and introduce themselves?

3 JUDGE STROTHER: Very well.

4 MR. DAVIS: Again, we currently show
5 three phone call-in listeners. But, we are
6 unable to access the individual call line such as
7 the 530 number.

8 If they sent in a message by text, it
9 might be better to read any text message that
10 would have been sent.

11 MS. HOAGLAND: Okay. It looks like
12 Pushpinder Kumar is on mute right now. But he
13 has a question that was sent by text.

14 JUDGE STROTHER: Okay. Mr. Kumar?

15 MS. VAWTER: We need you to unmute
16 him, please.

17 (Simultaneous speaking.)

18 MS. VAWTER: He's still muted.

19 MR. HATCH: He should be able to talk.

20 MS. VAWTER: He says he's still muted.

21 MR. DAVIS: Mr. Kumar if you could --
22 Andy, go ahead and promote him to panelist and

1 that will eliminate the problem.

2 MR. HATCH: Done.

3 JUDGE STROTHER: Mr. Kumar, can you
4 unmute yourself, I guess, is the advice?

5 MS. VAWTER: Hang on. He got
6 disconnected. He's now trying to connect again.

7 JUDGE STROTHER: Very well.

8 MS. VAWTER: Okay. He's on.

9 JUDGE STROTHER: Mr. Kumar?

10 MS. VAWTER: He says he can't unmute.

11 JUDGE STROTHER: Okay.

12 MR. HATCH: I promoted him to
13 panelist. This is Andy Hatch.

14 JUDGE STROTHER: So, Mr. Kumar, I
15 think there's a -- there you are. I think as a
16 panelist, Mr. Kumar, you can unmute yourself.

17 MR. KUMAR: Can anybody hear me know?

18 JUDGE STROTHER: We sure can. Go
19 ahead.

20 MR. KUMAR: Okay. Perfect. Thank
21 you. Your Honor, we have a question from phone
22 number (530) 519-7892. The first text that the

1 questioner sent was 11:09 a.m.

2 And I -- the first question he's
3 asked, is while it is clear that grower returns
4 have suffered, have processor returns been
5 negative as well?

6 In other words, is total revenue for
7 industry shrinking? That was his first question
8 for the presenter. Should I start on the second
9 one?

10 JUDGE STROTHER: No. Let's get -- do
11 you have a question on that, Mr. Crain?

12 MR. CRAIN: Yes. The question, or the
13 answer to the question is that yes, the total
14 market shrunk. And there was less return for the
15 entire industry.

16 MR. KUMAR: Should I proceed on the
17 second question, sir?

18 JUDGE STROTHER: That seemed like a
19 complete answer to me. And I think there was --
20 relaying on that, it seemed like a complete
21 answer to me.

22 So, second question Mr. Kumar.

1 MR. KUMAR: How does the presenter see
2 the problem ending up in a better price to the
3 grower and not just more product being pushed
4 through the handler?

5 MR. CRAIN: The answer to that
6 question is that as we expand the market for
7 California walnuts, the demand will grow. Once
8 the demand is closer to the supply, returns for
9 the entire industry will increase. And that will
10 result in better returns for all of those
11 involved.

12 MR. KUMAR: All right. Should I
13 proceed to the next question, sir?

14 JUDGE STROTHER: Yes. Third question.

15 MR. KUMAR: Is the assessment only on
16 shelled products?

17 MR. CRAIN: Yes. That's when they've
18 done all the products. However, the Board uses a
19 calculation to determine the federal equivalency
20 of financial sales made.

21 So yes. The answer is it is based on
22 all sales.

1 MR. KUMAR: So the question was, is
2 the assessment only on shelled? So, is it just
3 shelled? Or non-shelled also?

4 MR. CRAIN: It is shelled and
5 unshelled.

6 MR. KUMAR: Shelled and unshelled.
7 The fourth question. Who actually pays the
8 assessment, grower or handler?

9 MR. CRAIN: The assessment is paid by
10 the processor and handler to the Board. However,
11 the fee payment is different, and paid by the
12 grower.

13 So, the assessment is passed onto the
14 grower.

15 MR. KUMAR: Should I proceed to the
16 next question, sir?

17 JUDGE STROTHER: Please.

18 MR. KUMAR: Is the presenter -- if the
19 presenter could explain how the process of
20 purchasing the crop of the grower? My experience
21 is the grower delivers his crop to the handler
22 and receives a payment from the handler after the

1 handler moves the year's crop.

2 Do I need to repeat it?

3 MR. CRAIN: Mr. Kumar, please repeat
4 the question.

5 MR. KUMAR: Yes. If the presenter
6 could explain how the process of purchasing the
7 crop from the grower? My experience is the
8 grower delivers his crop to the handler and
9 receives a payment from the handler after the
10 handler moves the year's crop.

11 MR. CRAIN: The relationship between
12 the processor and the grower is subject to
13 agreement between the two. The norm in the
14 industry is that the grower will deliver the
15 products to the processor, and the processor will
16 make progress statements to the grower throughout
17 the year as the product is marketed.

18 The value that's derived from the sale
19 of goods is usually calculated to determine the
20 grower value. And then those values are paid
21 throughout the year, three to four payments
22 perhaps.

1 MR. KUMAR: Okay. So, I believe the
2 question that he was really asking is, like you
3 answered it. So, the payments are made through
4 the year, not after the year's crop is done.

5 Is that correct?

6 MR. CRAIN: That is correct. They're
7 made throughout the year.

8 MR. KUMAR: Should I go to the next
9 question, sir?

10 JUDGE STROTHER: Please.

11 MR. KUMAR: The presenter said that
12 the biggest buyer is the U.S. market. I believe
13 his slide reflected 500 million tons. But, a
14 later slide indicates that 66 percent is
15 exported.

16 Could he please clarify that. I may
17 have missed something. But, it seems that one of
18 the numbers is incorrect.

19 MR. CRAIN: Yes. I would be glad to
20 elaborate on that. The domestic market is equal
21 to about 500 million pounds, okay. That's about
22 34 percent of the total volume. And 66 percent

1 of the total volume is exported.

2 MR. KUMAR: So there's another
3 question for text message. It says, so the
4 grower does not actually sell his crop to the
5 handler?

6 MR CRAIN: The grower does sell his
7 crop to the handler/processor.

8 MR. KUMAR: Let me ask him if he has
9 any more questions. So, if I got notice for the
10 phone line after that.

11 JUDGE STROTHER: I'm sorry, Mr. Kumar.
12 I missed that.

13 MR. KUMAR: I was asking the phone
14 line that do we have any more questions? Oh,
15 yes. He said he does. He is going to ask more
16 questions.

17 JUDGE STROTHER: Okay. Do we know who
18 the examiner is? Is this Mr. MacTavish?

19 MR. KUMAR: Your Honor, this is
20 Pushpinder Kumar. I did ask the -- over the
21 phone line, do you have any questions? He said
22 he does.

1 But maybe he's still typing.

2 JUDGE STROTHER: Okay. Mr. Kumar, do
3 we know who this questioner is?

4 MR. KUMAR: Oh, let me ask the name.

5 JUDGE STROTHER: Yes. Get a name and
6 what his affiliation is.

7 MR. KUMAR: Your Honor, I sent the
8 text to ask the full name. I got no response
9 yet. So, he's asking another question. To
10 clarify, so revenues at the handler level have
11 decreased? Could you clarify, Mr. Presenter?

12 MR. CRAIN: Mr. Kumar, could you
13 please repeat the question?

14 MR. KUMAR: The question is, to
15 clarify it, so the revenues at the handler level
16 have decreased? This is his question.

17 MR. CRAIN: Yes. They have.

18 MR. KUMAR: And he gave me his name.
19 His name is John MacTavish. I will spell it. J-
20 O-H-N, the second word Mac, M-A-C Tavish, T-A-V-
21 I-S-H.

22 JUDGE STROTHER: And this is the same

1 John MacTavish that was on the Zoom chat
2 function. And earlier he identified himself as a
3 grower.

4 Is it your understanding, Mr. Kumar,
5 this completes Mr. MacTavish's questions?

6 MR. KUMAR: There's another question.
7 He's asking, decreased in sum? So, I guess it is
8 in association with the previous question.
9 Previously, to clarify so revenues at the handler
10 level -- to clarify, so revenues at the handler
11 level have decreased.

12 Then he says, decreased in sum? So,
13 he wants to clarify that.

14 MR. CRAIN: That question is not clear
15 to me. Could you repeat?

16 MR. KUMAR: Yes. So, his question
17 was, to clarify, so the revenues at the handler
18 level have decreased. And then the second thing
19 he said, decreased in sum?

20 So, decreased in sum, I guess in total
21 that's what he's meaning.

22 MR. CRAIN: I can't say as I

1 understand his question. I can tell you that the
2 gross revenues of handlers at the lower -- in the
3 years have produced lower grower returns. Were
4 lower than they were when the growers had higher
5 returns.

6 MR. KUMAR: I am asking John over text
7 message if he has any more questions.

8 JUDGE STROTHER: You say you sent a
9 text to ask if he has other questions?

10 MR. KUMAR: Yes. Oh.

11 JUDGE STROTHER: Okay.

12 MR. KUMAR: He has another question.
13 Is the total revenue for the year decreased as
14 crop size increased?

15 MR. CRAIN: The revenues in 2018
16 actually decreased very significantly with the
17 higher volume of walnuts produced then the
18 previous years where fewer walnuts were produced.

19 So, yes, the total revenue stream went
20 down as the crop volume has increased.

21 MR. KUMAR: I am asking on the text if
22 he has any more questions. I am waiting. Does

1 that -- does that last statement apply for
2 handlers regarding that the total volume for year
3 decreased as the crop size increased? Does that
4 apply to handlers?

5 MR. CRAIN: Yes. It does.

6 MR. KUMAR: He said, thank you.

7 JUDGE STROTHER: We take that to mean
8 he's -- that completes his questions, Mr. Kumar?

9 MR. KUMAR: I will clarify with him.
10 Yes. He has no more questions.

11 JUDGE STROTHER: He has no more?

12 MR. KUMAR: He said no more. He has
13 no more questions.

14 JUDGE STROTHER: Very well. All
15 right. I think we should give the opportunity,
16 and during an adjudicative hearing we have
17 recross and redirect. Let's just rotate that.

18 I take it that -- well, first is
19 anyone else that's on the telephone that hasn't
20 spoken already have any questions for this
21 witness? Okay. Hearing none, I think we should
22 cycle back through the previous examiners. Any

1 further USDA examination of this witness?

2 (No response.)

3 JUDGE STROTHER: Okay. Any industry
4 proponent examination of this witness?

5 MS. CONNELLY: Your Honor, Michelle
6 Connelly, I do not. Anyone on the phone have
7 anything?

8 (No response.)

9 MS. CONNELLY: I think there is none,
10 sir.

11 JUDGE STROTHER: Okay. Anyone that
12 has phoned in by Zoom?

13 (No response.)

14 JUDGE STROTHER: That's not phone in,
15 but been added in?

16 MS. HOAGLAND: I don't see any hands
17 raised at this time.

18 JUDGE STROTHER: I'm sorry, Ms.
19 Hoagland? Okay. And I take it no further
20 questions by anyone that's telephoned in.

21 By the way, I should have asked, there
22 were no objections at any point during this

1 witness' testimony, were there?

2 MS. HOAGLAND: No.

3 JUDGE STROTHER: I didn't get any.

4 Very well --

5 MR. KUMAR: No. No objections over
6 the text messages.

7 JUDGE STROTHER: Okay. I think the
8 next thing to do is to consider the admission of
9 Mr. Crain's Exhibits.

10 I think I'll just -- there were just
11 three of them. I think I'll just read off what
12 they are and see if there's any objections to any
13 of them. And we can break it down if we have to.

14 Okay. So, Exhibit 14 for
15 identification is Mr. Crain's testimony that's on
16 behalf of the California Walnuts Board. Exhibit
17 15 is his testimony Exhibit, which is a
18 PowerPoint industry overview.

19 And Exhibit 16, proposed Exhibit is a
20 University of California Cooperative Extension.
21 I won't read the rest of that, but it's entitled
22 2018 Sample Cost to Establish and Produce English

1 Walnuts Study.

2 Any objections by anybody to the
3 admission of Exhibits 15 through 16?
4 Hearing none, Exhibits 14 through 16 are admitted
5 to the record.

6 (Whereupon, the above-
7 referred to documents were
8 received into evidence as
9 Exhibit Nos. 14, 15, and
10 16.)

11 JUDGE STROTHER: Okay. Mr. Crain,
12 thank you for your testimony. You can virtually
13 step down from the stand.

14 MR. CRAIN: Thank you, Your Honor.

15 JUDGE STROTHER: Thank you. Okay.
16 We're -- it's five of 12:00 by my clock in
17 California. I think it's my preference if
18 everyone -- how's my hearing reporter doing? Any
19 --

20 COURT REPORTER: Doing all right, Your
21 Honor.

22 JUDGE STROTHER: You're okay going

1 ahead? Of going later?

2 COURT REPORTER: Yes, Your Honor.

3 JUDGE STROTHER: Okay. Everyone else
4 okay with calling another witness?

5 MR. HATCH: Yes, sir.

6 JUDGE STROTHER: Okay. Let's do it.
7 This will be another California Walnuts Board
8 witness, Jack Mariani. Is Mr. Mariani on the
9 line one way or the other?

10 MR. MARIANI: Yes. I am present.

11 JUDGE STROTHER: Okay. Welcome Mr.
12 Mariani. Please raise your right hand. Mr.
13 Mariani, do you swear or affirm to tell the truth
14 and nothing but the truth under penalty of
15 perjury?

16 MR. MARIANI: Yes, I do.

17 JUDGE STROTHER: Thank you. All
18 right. If you -- I'll just do it. I have as for
19 an Exhibit identified for the record, not yet
20 admitted, is your testimony.

21 Exhibit 18 is an exhibit entitled
22 PowerPoint overview of the Proposal, Program

1 Communication Samples. Is that correct, Mr.
2 Mariani?

3 (Whereupon, the above-
4 referred to document was
5 marked as Exhibit No. 18 for
6 identification.)

7 MR. MARIANI: Yes. It is.

8 JUDGE STROTHER: Were these Exhibits
9 prepared by you or under your supervision?

10 MR. MARIANI: Myself with the help of
11 the California Walnut Board.

12 JUDGE STROTHER: Do you think you will
13 adopt this Exhibit as part of your testimony
14 today, correct?

15 MR. MARIANI: Correct.

16 JUDGE STROTHER: Okay. I guess USDA
17 goes first. Any questions? Any examination by
18 USDA?

19 MS. SCHMAEDICK: Judge, this is
20 Melissa Schmaedick. Is Mr. Mariani going to read
21 his statement into the record?

22 JUDGE STROTHER: I'm -- I'm not quite

1 getting the hang of this. Mr. Mariani, of
2 course. The way this works is we do not have a
3 direct examiner, and you simply can paraphrase
4 your testimony into the record.

5 It is Exhibit 17. Are you ready to do
6 that?

7 (Whereupon, the above-
8 referred to document was
9 marked as Exhibit No. 17 for
10 identification.)

11 MR. MARIANI: Yes, I am. I'd like to
12 read it into the record. And then afterward I
13 have several PowerPoint slides I would just like
14 to share.

15 JUDGE STROTHER: Please proceed.

16 MR. MARIANI: My name is Jack Mariani.
17 J-A-C-K, M-A-R-I-A-N-I. I am a partner and
18 cofounder of Mariani Nut Company. It's a growing
19 and handling operation based in Winters,
20 California.

21 I'm testifying today as a large
22 handler. I served as Vice Chairperson of the

1 California Walnut Board, and I sit on the
2 Executive and Market Development Committees of
3 the Board.

4 Today, I would like to provide a
5 description of the proposed amendment background.

6 Early in 2019, the walnut industry
7 undertook strategic planning efforts to assess
8 current and future needs. The industry's
9 continued growth and future production outlook
10 made it necessary to evaluate future crop
11 utilization.

12 The discussion included potential
13 programs that could benefit industry in
14 supporting growth, including a credit-back
15 program utilized successfully by other commodity
16 organizations, which could increase demand to
17 stabilize future market returns.

18 With the forecasted increase in
19 production, California Walnut Board needs to
20 develop new opportunities to increase demand and
21 sales in order to stabilize future market
22 returns. Otherwise, the increased supply will

1 likely depress market returns.

2 California Walnut Board's tremendous
3 marketing effort in the United States has
4 increased over the past three years with a goal
5 to grow domestic consumption, as research has
6 indicated that U.S. growth potential remains
7 untapped with only 40 percent of the household
8 penetration.

9 The proposal to add credit-back
10 authority for promotional activities would
11 encourage handlers to build upon California
12 Walnut Board's activities, providing additional
13 visibility, awareness, and ideally sales for
14 walnuts, through crediting back a portion of the
15 handler promotional expenses against handler
16 assessments due under the program.

17 This proposal, which was recommended
18 by the California Walnut Board on September 13,
19 2019, would amend Federal marketing order 984 by
20 adding authority to provide credit-back for
21 market promotion expenses paid by handlers
22 against their annual assessments due under the

1 program.

2 If implemented, this program would
3 encourage handlers undertake market promotion
4 activities in addition to the California Walnut
5 Board's generic marketing efforts. Currently,
6 this authority is not granted in the order
7 language.

8 The proposed amendment would include:
9 Adding authority under 984.46, Research and
10 promotion, for credit back of market promotion
11 activities handler assessments; adding a new
12 section 984.546, Credit for market promotion
13 activities, including paid advertising, under a
14 new Subpart D, Research and Development
15 Requirements, outlining the functional
16 requirements of the credit back program.

17 The California Walnut Board is
18 authorized to conduct generic marketing
19 activities for a promotion of in-shell and
20 shelled walnuts under the program. The
21 California Walnut Board has previously developed
22 new product formulations for handler use.

1 However, because the California Walnut
2 Board does not manufacture or otherwise sell, it
3 is incumbent upon the handler to further develop
4 and deliver new products to the market. The
5 credit-back program, because it would partially
6 offset handler assessments due under the program,
7 would incentivize handlers to support such
8 initiatives.

9 Program implementation would be under
10 the authority's parameters and the requirements
11 proposed under the new 984.546. Following
12 approval from the Secretary, the California
13 Walnut Board would implement the program to
14 become effective the following crop/fiscal year.
15 Annually, the California Walnut Board will
16 establish a budget with annual assessment to be
17 collected, including a budget for the credit back
18 program.

19 The California Walnut Board would then
20 communicate to handlers that the credit-back
21 option is available, their pro rata portion of
22 available credit-back funds and procedures for

1 the program and its use, including activities
2 that are eligible for credit-back.

3 That concludes my written statement.
4 I do have several PowerPoint slides I'd like to
5 present.

6 JUDGE STROTHER: Yes, turning to
7 Exhibit 18, mark for identification.

8 JUDGE STROTHER: It looks like Exhibit
9 18 is now up on the shared screen. You may
10 proceed, Mr. Mariani.

11 MR. MARIANI: Very good. I would then
12 ask you to move on to the next slide. Here, you
13 can see the problem we are facing and the amount
14 of production that is going to be estimated to
15 occur over the next several years.

16 You see right now we are slightly
17 under 700,000 tons the past several years. As we
18 approach this harvest in 2020, we are expecting a
19 record crop to be our first crop over 700,000
20 tons.

21 As future years move along and the new
22 acreage in production, you can see potentially we

1 could be well over 800,000 tons which is at this
2 point going to be a real marketing challenge, I'd
3 say. Next slide.

4 The walnut purchase incidence is where
5 we see we have tremendous opportunities going
6 forward. As you can see, the market penetration
7 is really only about 40 percent of potential
8 consumers.

9 And when we look at the different age
10 groups, there's big variances, but especially
11 when you look at the 18 to 24 where only 22
12 percent are right now actual buyers. So we see
13 some great opportunities there with some new
14 products as we go forward. Next slide, please.

15 And I won't read this, but these are
16 the proposed changes that we are recommending to
17 USDA. Next slide, please.

18 These are our current industry
19 practices as we talked -- as I explained about
20 this, generic activities that the Board is doing.
21 The Walnut Board does not manufacture or sell.
22 It's up to the handlers do so and how the credit-

1 back program would partially offset the
2 assessments that would incentivize handlers to
3 support that activity. Next slide, please.

4 These are the language that we're
5 proposing amending the order. That's what we did
6 already. Go to the next slide.

7 And what is the best solution? Why is
8 it? We've gone over the Walnut Board needs to
9 develop new opportunities to increase demand and
10 stabilize future market returns. Otherwise, the
11 increased supply will likely depress market
12 returns.

13 The proposal to add credit-back
14 authority for promotional activities would
15 encourage handlers to build upon the Walnut
16 Board's generic marketing activities, providing
17 additional visibility, awareness and ideally
18 sales for walnuts, through crediting a portion of
19 the handler development and promotional expenses
20 against handler assessment due under the program.
21 Next slide, please.

22 We have been working on this idea now

1 for some time, and we have a tremendous amount of
2 industry outreach. And really every opportunity
3 that the Walnut Board has had, it's exercised.
4 The idea of explaining and discussing this
5 opportunity of credit-back at many venues.

6 We've had the Walnut Board annual
7 meeting in May of 2019 and September of 2019.
8 There have been numerous grower trade shows and
9 UC extension meetings. It's constantly covered
10 in the California Walnut Board Grower Newsletter
11 sent to all growers.

12 We've had industry trade publication
13 articles in many of the magazines. We've sent
14 product newsletters to the industry. We've sent
15 a series of emails to the Board and all handlers.
16 We've had additional communication to come,
17 following the Secretary's decision as a lead up
18 to the grower referendum. Next slide, please.

19 We have had handler and producer
20 support. To date, the program has received wide
21 support from the growers it's spoken with at
22 Board, Industry, and at Grower meetings. Next

1 slide.

2 That covers all of it. I believe that
3 would conclude my remarks.

4 JUDGE STROTHER: I had to unmute
5 myself. Sorry again. Does USDA have any
6 examination for this witness, Mr. Mariani?

7 MS. SCHMAEDICK: Yes, Your Honor.
8 This is Melissa Schmaedick for USDA.

9 JUDGE STROTHER: Ms. Schmaedick, your
10 witness.

11 MS. SCHMAEDICK: Thank you.

12 BY MS. SCHMAEDICK:

13 Q Good afternoon, Mr. Mariani. How are
14 you?

15 A Very good. Thank you.

16 Q Good. Thank you for your testimony,
17 and thanks for joining us today. My first
18 question for you is you talked a lot about the
19 outreach that has been done to educate and
20 involve industry members. How are you, yourself,
21 involved in this effort? Are you part of the
22 subcommittee on analyzing these proposed

1 amendments?

2 A My personal involvement has been with
3 other handlers, I would say as much as any,
4 discussing the ideas behind the credit-back idea
5 and how it would pertain to the handlers. I
6 think most handlers and I'd probably say many
7 growers are already somewhat educated about these
8 types of programs.

9 The California almond industry has
10 been utilizing this type of credit-back
11 opportunity for many years with great success.
12 And I think much of our industry in walnuts has
13 observed that. So I think there's already a lot
14 of people having some pretty good information on
15 the opportunity as to the benefits of this
16 program like the credit-back program.

17 Q Are you saying that a number of the
18 walnut growers are also almond growers?

19 A There are a number. I have no idea of
20 the count or the percentage. But for sure, there
21 are. There is a crossover there where there are
22 a number of walnut growers that also grow

1 almonds.

2 Q And so is it your opinion that the
3 concept of the credit-back program is fairly well
4 understood within the walnut industry?

5 A I don't know what the -- what the
6 definition of that is and I don't have a
7 percentage. But I do know that there's many,
8 many growers that have a certain education of
9 that type of program already. As a percentage, I
10 wouldn't have any idea.

11 Q Thank you. But in your opinion, has
12 there been a concerted effort to educate the
13 industry and allow people the opportunity to ask
14 questions or express concerns?

15 A Yes, I think the California Walnut
16 Board has done an excellent job of making the
17 growers aware of this activity and educating them
18 about it. And I'd say most growers have been
19 aware of this.

20 They've been informed of this numerous
21 times over the last year via the different Board
22 meetings, newsletters, electronic communications.

1 I would say I'd be surprised if very few of them
2 were not aware of it.

3 Q Thank you. And as far as your
4 personal involvement, were you a subcommittee
5 member that was involved in analyzing and
6 discussing the recommended amendments?

7 A Yes, I was a committee member. Yes,
8 I continue to be a committee member.

9 Q How would you describe the discussions
10 that were held in that subcommittee? Were they
11 rigorous in terms of just discussion of
12 challenges and potential solutions? Do you feel
13 that there was a real debate about the proposed
14 amendments?

15 A Definitely, yes. I think it started
16 back with the last strategic planning meeting of
17 the California Walnut Board with the goals that
18 they established in line with a huge amount of
19 acreage that would be coming in production.

20 And when the results of the strategic
21 planning meeting were finished, I think it was
22 then the group decided it would be an excellent

1 thing for the committee to look at to see what
2 different possibilities might be available under
3 the marketing order.

4 How we might be able to start to
5 change that domestic consumption level which Mr.
6 Hinman talked about earlier. We've been stuck at
7 about a half a pound a person for seemingly ever.
8 So this is sort of a challenge from the strategic
9 planning commission to the Board. And then it
10 ended up at the Board committee to try to see
11 what further could be done.

12 Q And during your time as a subcommittee
13 member, would you say that there were several
14 alternatives that were discussed prior to
15 arriving on the proposed amendments as they are?

16 A I think the answer to that is yes. I
17 mean, one of the ones that I think was always
18 looked at was with pre-assessments which nobody
19 wanted to do.

20 And I think that looking at the -- I
21 think one of the things that our committee looked
22 at was where the California walnut industry seems

1 to be lacking is in the snacking category. And
2 we really thought there's things we needed to do
3 to increase consumption.

4 And we looked at -- we spotted ways
5 where we can get out in the marketplace. And to
6 do so, we really needed handler support, whether
7 it be in the snacking category with the flavored
8 nuts or with the nut butters or the trail mixes.
9 That we needed to get people out there trying to
10 push new products and increase that domestic
11 consumption.

12 And that's what we talked about as a
13 Board committee. And we felt that the best way
14 to move that needle was go via a credit-back
15 program so that we can get multiple handlers out
16 there trying to increase consumption and
17 hopefully with some new products.

18 Q Thank you. So this is the second time
19 that the figure of a 40 percent household
20 penetration has come up. And so can you describe
21 how you arrive at that 40 percent household
22 penetration? Where does that number come from?

1 A We have a research company, Rose
2 Research, that's done market research for the
3 California Walnut Board for a number of years.
4 And this is a result from their activities,
5 bringing back these types of numbers for us to
6 look at and see where we need to improve.

7 Q And so assuming they come to some sort
8 of market research perhaps based on surveys or
9 consumer data from another source. Is that
10 assumption correct?

11 A Yes. Yes, that is.

12 Q Okay. I'm wondering if you could
13 explain a bit more why it is believed that
14 handlers are in a position to conduct different
15 and -- let me try to rephrase this.

16 You mentioned that there are certain
17 activities that the California Walnut Board
18 cannot undertake. And if I'm understanding
19 correctly, the desire is to encourage handlers to
20 conduct and undertake those activities
21 themselves.

22 Can you explain why the California

1 Walnut Board can't do those activities? And kind
2 of what kind of activities? You talked about
3 healthy snacks and walnut meal and that sort of
4 thing. But just more broadly, can you kind of
5 explain why there's this need to focus on handler
6 activity on things that the Board cannot do?

7 A Yes. Well, to be fair to the walnut
8 industry, the Board can only do generic
9 activities that would benefit every single
10 handler. And so I guess just take an example.
11 If you have Handler A who comes out with a new,
12 say, a maple flavored walnut. And --

13 MR. STROMAN: I'm hearing some beeping
14 in the background. I'm sorry.

15 JUDGE STROTHER: Stop for a second,
16 Mr. Mariani. That's the worst on-hold music I've
17 ever heard. It seems to have remedied itself,
18 though. Okay, continue.

19 MR. MARIANI: I was just going to say,
20 well, since the California Walnut Board can only
21 do generic activities, an example of a credit-
22 back type of benefit would be, say, Handler A

1 comes out with, say, a maple flavored walnut --

2 JUDGE STROTHER: Same problem. We're
3 getting some --

4 (Simultaneous speaking.)

5 JUDGE STROTHER: Mr. Mariani, we're
6 getting some beeping in the background. Does
7 anyone have any ideas what that might be?

8 MS. CONNELLY: Jack, it sounds like it
9 might be coming from your line. It's only when
10 you're testifying, when you're speaking that we
11 hear a feedback. Could you potentially relocate
12 yourself to see if that makes a difference?

13 MR. MARIANI: Surely. How about now?
14 Does that make any difference at all?

15 MS. SCHMAEDICK: It seems to.

16 MS. CONNELLY: Yeah, it seems a little
17 better. Can the court reporter hear?

18 MR. STROMAN: Yeah, I can hear mostly.

19 JUDGE STROTHER: Proceed, Mr. Mariani.

20 MR. MARIANI: Yes. I was going to say
21 an example. A walnut handler wants to come out
22 with a new walnut item. Let's just say a maple

1 walnut snack. So the Walnut Board can't help
2 that handler at all. But the handler can go to
3 the supermarkets where he's trying to sell and do
4 some promotional activities or advertising and
5 try to create a brand new market for that
6 particular item. The California Walnut Board
7 itself cannot support.

8 BY MS. SCHMAEDICK:

9 Q Thank you. So does that mean that
10 branded products could be part of this program?

11 A Yes.

12 Q And how does the provision of branded
13 products help the overall walnut industry?

14 A Well, I think when you get a handler
15 supporting a particular item by using their own
16 promotional dollars in combination with the
17 California Walnut Board's generic promotion, it
18 has nothing -- it can't help develop consumption
19 and help develop some new products.

20 We've seen that in other industries so
21 successfully. And we know we have so much more
22 market penetration available to us, 60 percent of

1 households. We have a healthy product. We have
2 a plant-based product that seems to be growing in
3 popularity over the world. And it just seems
4 like there's tremendous opportunities for our
5 industry and give additional avenues to introduce
6 and promote our product.

7 Q So if I'm understanding you correctly,
8 would it be accurate to paraphrase that any kind
9 of promotion of walnut products, whether it's
10 generic or branded, the hope is that stimulates
11 demand for walnuts and therefore increases that
12 household penetration, increases consumption, and
13 then helps absorb that supply, the oversupply,
14 and hopefully result in stronger market prices?
15 Is that an accurate summary of what you're saying
16 essentially?

17 A Yes. Yes, it is.

18 Q Okay. Thank you. Let me look at my
19 notes here. Make sure I haven't missed anything.
20 I'm looking at the slide titled, Amended Order
21 Operations. And it has two bullet points and it
22 essentially talks about the addition of the

1 Section 984.546 and then the authority to create
2 rules and regulations.

3 I'm curious. When the rules and
4 regulations that are being proposed today were
5 developed, was there specific attention paid to
6 mechanisms that would ensure equal access to
7 potential benefits of this program to all
8 handlers?

9 A Yes, that was the idea and I think
10 will do quite well.

11 Q Can you expand on how the
12 deliberations tended to -- or intend to ensure
13 that equitability? What's the thought process
14 there that enables all handlers to potentially
15 benefit from this?

16 A Well, I think it was the Board's idea
17 to make sure that when drawing up regulations
18 that every handler had the opportunity to access
19 the opportunities available to them, regardless
20 if it was a large handler or a small handler.
21 Actually, handlers' operations are different.
22 But the opportunity and the availability of the

1 credit-back program is wide open for every
2 handler to utilize.

3 Q And is that because all handlers pay
4 assessments, and this program is based on sort of
5 a -- I believe you said a crediting against the
6 assessments that are due under the program? Does
7 that enable everybody to participate at some
8 level?

9 A Yes, you're exactly right. Every
10 handler pays an assessment and then will be able
11 to receive part of that assessment back to the
12 credit-back program based on the amount that he
13 pays into the program.

14 Q Thank you. And one last question.
15 There's one phrase here that I just want to make
16 sure I'm understanding correctly. It's on your
17 slide entitled, Proposed Changes 1a. There are
18 two bullet points. And again, this goes back to
19 your brief explanation of adding a new Section
20 984.546.

21 And I'll read the sentence. It says,
22 proposed amendment would include: Adding

1 authority under 984.46, Research and promotion,
2 for credit back of market promotion activities
3 against handler assessments; adding a new
4 984.546, Credit for market promotion activities,
5 including paid advertising, under Subpart D,
6 Research and Development Requirements, et cetera.

7 I guess my question is, so currently
8 -- so pre-credit-back program, handlers, I
9 assume, are paying their assessments. And a
10 portion of that assessment then goes to a fund
11 that is dedicated to promotion activities by the
12 Board. Is that correct?

13 A Yes, the market development committee
14 made the recommendation. The full Walnut Board
15 has to be here for its operating budget and part
16 of that includes promotion.

17 Q Okay.

18 A I think public relations, various
19 different marketing activities.

20 Q Okay. So if I understand that, you
21 have your assessments that you collect on an
22 annual basis. And part of your budget for the

1 use of those assessments is then allocated to
2 promotion type of activities that are generic.
3 So if I'm understanding the proposed change, is
4 it that a portion of that promotional budget
5 would then be used to support this credit-back
6 program?

7 And my question, I guess, is, are we
8 talking about adding additional funds to a
9 promotion program, more funds than in the past?
10 Or are we talking about the same type of
11 promotional budget but a portion of that budget
12 being redirected to the credit-back program? So
13 essentially, there isn't really more overall
14 dollars being spent by the Board on promotion.

15 I don't know if I'm making this
16 question very clear. So I'm trying to understand
17 at the end of the day if this change were
18 implemented, is the amount of assessment dollars
19 that the Board would spend on promotion, is that
20 changing or growing in any way? Or is this a
21 mechanism to increase the promotional budget
22 outside of the Board's budget?

1 A I will try to give you my
2 interpretation. And I'll let Mrs. Connelly later
3 during her comments probably be more exact. My
4 understanding is we will maintain our overall
5 market promotion, a freeze.

6 Our market development committee is
7 recommending the same amount as previously. In
8 other words, we would have our full budget for
9 advertising, promotion, and all our generic
10 activities would remain the same.

11 Yes, I believe we will see an increase
12 overall once credit-back is in because we would
13 expect handlers to not just use their credit back
14 that they're receiving. But they would probably
15 expand upon that amount.

16 So I think we feel from looking at
17 other credit-back activities in other industries
18 that I think this idea overall increases the
19 amount of money that is spent for promoting our
20 products. And I would let Mrs. Connelly later on
21 perhaps correct me on that.

22 Q Okay. Thank you. I appreciate your

1 response.

2 MS. SCHMAEDICK: And I have no further
3 questions, Your Honor.

4 JUDGE STROTHER: Any further
5 examination by USDA personnel?

6 DR. HINMAN: Don Hinman.

7 JUDGE STROTHER: Mr. Hinman, your
8 witness.

9 BY DR. HINMAN:

10 Q Yes, Don Hinman, USDA. Thank you, Mr.
11 Mariani. I wanted to refer again to your Slide 4
12 on walnut purchase incidence, your thing about
13 Rose Research. I have a question. It's the
14 chart where it has gender and age group on it. I
15 think it's Slide 4.

16 All right. Okay. Mr. Mariani, thank
17 you. My question is about so I see that it looks
18 like the sample size -- let me see if I'm
19 interpreting this correctly. It's 401. So does
20 that mean there were -- that was 40 percent. So
21 you know if Rose Research sampled 1,000 people,
22 and 400 of them responded that they were walnut

1 consumers? Is that a correct interpretation?

2 A No. If I'm not mistaken, I believe
3 that 40 percent are responding that they are
4 walnut consumers and 60 percent are not.

5 Q Right. But is that -- is it 40
6 percent out of 400? Or is it 40 percent out of
7 1,000? Is the 400 the consumers?

8 A I do not have the answer to that.

9 Q That's fine. Thank you. I do want to
10 ask, if you look, it's the age group who seems to
11 have the interesting distinctions there in
12 comparison. It looks like two age groups, 18 to
13 24 and 35 to 44 are other consumers.

14 I want to ask, how do you interpret
15 that? And does that mean that if you had credit-
16 back, you as a handler would find a way -- is one
17 of your strategies perhaps to address consumption
18 by age group as part of your marketing strategy
19 if you would had credit-back for them?

20 A I think yes. The answer is yes. I
21 think we have to look at where we are
22 underrepresented, how to correct that. We see

1 that the older group must be much smarter. They
2 know that walnuts are so good for you, lowering
3 your cholesterol and making you healthy.

4 Q Right, right. Thank you. And then
5 just a final question along the lines of what I
6 asked Mr. Crain. And his statement was that he
7 believed that the costs is effectively zero to a
8 handler and that the benefits are large.

9 And would you agree with that
10 statement? And if you want to state a brief
11 reference of the benefits versus costs. If you
12 want to make a brief statement on that. Thank
13 you.

14 A Well, I think I agree with Mr. Crain
15 on that. That I think going along with the
16 suggested program, we're going to see nothing but
17 benefits for our industry.

18 Q Thank you. Those are all my
19 questions.

20 DR. HINMAN: Thank you, Your Honor.
21 Thank you, Mr. Mariani.

22 JUDGE STROTHER: Okay. That is the

1 USDA's questions I take it?

2 (No audible response.)

3 JUDGE STROTHER: Okay. Following our
4 procedure, industry proponents come next in
5 questioning.

6 MS. CONNELLY: Thank you, Judge. Just
7 one question for Mr. Mariani.

8 BY MS. CONNELLY:

9 Q Mr. Mariani, is it the intent of the
10 Board to increase assessments to cover up this
11 program?

12 A No. I mean, I can't answer for the
13 whole Board. But my feeling is I'd be very
14 surprised if anybody wanted to increase the
15 handler assessments at this point, right? I'd be
16 very, very surprised if anybody wanted to do so.

17 Q So then this program would be funded
18 from the existing Board?

19 A Yes, that's my understanding.

20 Q Thank you.

21 JUDGE STROTHER: Is that all, Ms.
22 Connelly?

1 MS. CONNELLY: Yes. Thank you.

2 JUDGE STROTHER: Okay. Any other
3 industry proponents have any examination of this
4 witness?

5 No audible response.)

6 JUDGE STROTHER: Okay. Turning to
7 other participants who are on Zoom, anyone have
8 any questions? Have we gotten anything by chat
9 or text or anything like that this time around?

10 MS. HOAGLAND: Yes, Judge. We don't
11 have any through Zoom. But John MacTavish again
12 has sent a question via text message.

13 JUDGE STROTHER: Mr. Kumar, are you
14 available to handle this one again? We need to
15 unmute Mr. Kumar maybe.

16 MS. HOAGLAND: Yes, please unmute him.

17 MR. HATCH: Looking to do that now.
18 He's unmuted.

19 JUDGE STROTHER: Mr. Kumar?

20 MR. KUMAR: Yes, sir. I have a few
21 questions from Mr. John MacTavish. The first --

22 JUDGE STROTHER: Just before, he

1 identified himself as a grower?

2 MR. KUMAR: Yes, that's right.

3 JUDGE STROTHER: Proceed.

4 MR. KUMAR: Here, one comment that he
5 want to make a correction from Mr. Crain's
6 question and answer session. Can I go with that
7 first, or should I start with this session first?

8 JUDGE STROTHER: I'm sorry. I don't
9 understand. Is he asking that Mr. Crain be
10 called back?

11 MR. KUMAR: No, he just wanted to make
12 a correction that when Mr. Crain mentioned, he
13 said --

14 MS. CHILUKURI: Your Honor, I would
15 just state that if Mr. MacTavish would like to be
16 a witness, he can testify on that basis and
17 correct any misconceptions there. But to have it
18 be orderly that he should have to testify, if
19 he'd like to do that.

20 JUDGE STROTHER: I tend to agree. Mr.
21 Kumar, I don't have whatever Mr. MacTavish wants
22 to say and none of the rest of us do. Well, what

1 does this look like to you? Does this look like
2 the type of thing that's affirmative testimony?
3 Or is he correcting something about a question he
4 asked? Just how would you characterize what Mr.
5 MacTavish proposes to tell us at this point?

6 MR. KUMAR: It seems he wants to
7 correct the statement of Mr. Crain. In this
8 statement, he's saying that when Mr. Crain
9 mentioned that assessments are paid by growers,
10 he wants to make a correction that they're
11 actually -- the assessment is collected from the
12 grower and not handler expense. He wanted to
13 make that a record statement.

14 JUDGE STROTHER: I think that's not
15 evidence. It's nothing we can rely on without
16 having a witness testify about facts. So I
17 sustain the USDA's objections of Ms. Chilukuri
18 and I welcome Mr. MacTavish to sign on as a
19 witness.

20 MR. KUMAR: Should I proceed with the
21 questions for this session?

22 JUDGE STROTHER: Yes.

1 MR. KUMAR: So his comments are, the
2 first one, with no transparency between the
3 grower and handler, how does the grower know that
4 any additional cost for this program at the
5 handler level will just not be a reduction in
6 what is paid to the grower? Should I repeat it?

7 JUDGE STROTHER: We have a question,
8 Mr. Mariani.

9 MR. MARIANI: Yes. I don't know if
10 there's any transparency that would be obvious to
11 a grower. I would hope that the grower would be
12 in discussions with his handler to find out what
13 activities the handler is doing to promote these
14 new products. But as far as any transparency
15 other than just communication, I think that would
16 be the best answer.

17 MR. KUMAR: Should I proceed to the
18 next question, Your Honor?

19 JUDGE STROTHER: Give me a moment.
20 Are you saying, Mr. Mariani, that there's nothing
21 expressed in the proposed amendment that would
22 require that transparency?

1 MR. MARIANI: Your Honor, I don't
2 really know if there's anything that's specified.
3 I would just assume that a handler, if he's going
4 to exercise some of the credit-back activities,
5 that it would be obvious in many ways so he can
6 relay to his growers. I'm not really sure what
7 else -- what other transparencies there would be.

8 JUDGE STROTHER: Is it your opinion
9 then that the grower would know? Or do you have
10 an opinion?

11 MR. MARIANI: As a handler, I would
12 certainly communicate to all of my growers what
13 activities that we're pursuing and trying to
14 increase new products and where we're doing so.

15 JUDGE STROTHER: I'll give USDA
16 follow-up if they've got questions about this.
17 Go ahead, Mr. Kumar.

18 MR. KUMAR: Okay. The second question
19 is, how many handlers have indicated that they
20 would participate?

21 MR. MARIANI: I have no idea if they
22 communicated that to the Walnut Board as of now.

1 Probably not. Since there's nothing official,
2 all of this is being proposed right now. I don't
3 think there's any official records of
4 participation or anticipated participation.

5 MR. KUMAR: Can I go to the next
6 question, Your Honor?

7 JUDGE STROTHER: Hold on. Is there
8 any other witness who would have any further
9 information on that, Mr. Mariani?

10 MR. MARIANI: I'd ask Ms. Connelly.
11 But I certainly would not know myself.

12 JUDGE STROTHER: Very well. Next
13 question, Mr. Kumar.

14 MR. KUMAR: How many handlers actually
15 have the ability to create new products? Is this
16 program really a benefit to smaller handlers? Or
17 is something that helps subsidize the marketing
18 expenses for those handlers? Or are they
19 spending money promoting their brand?

20 MR. MARIANI: I don't really have an
21 answer for you. I do know that there are certain
22 number of small handlers who are doing some new

1 activities, looking at new products. But as far
2 as -- we have almost 100 handlers in the industry
3 right now. So it's difficult to put a number to
4 that.

5 MR. KUMAR: And the second -- in the
6 same question, he's asking, is this program
7 really a benefit to smaller handlers? Or is this
8 something that helps subsidize marketing
9 expenses? Or are those handlers already spending
10 money promoting their brand?

11 MR. MARIANI: I believe it was the
12 idea from our committee that we can get overall
13 demand increased and sales increased to increase
14 the benefit for all growers. That's what the
15 idea of the entire program is to try to raise the
16 water for everybody, for all growers.

17 MR. KUMAR: Should I go to the next
18 question, Your Honor?

19 JUDGE STROTHER: Yes, Mr. Kumar.

20 MR. KUMAR: Okay. Will we hear from
21 any of the smaller handlers today regarding their
22 support or lack of support for their proposal --

1 for this proposal?

2 MR. MARIANI: Everybody was notified
3 of the --

4 MS. CHILUKURI: I would interject and
5 say that it seems that Mr. MacTavish has
6 something to say. And if that's the case, he
7 should testify. Mr. Mariani can't be expected to
8 speak across the board about these types of
9 matters. He may not know or he may know. But if
10 Mr. MacTavish would like to testify, I think he
11 should get on a list and do so.

12 JUDGE STROTHER: You made that point
13 before, and I agree with that. But if Mr.
14 Mariani -- by the way, we lost Mr. Crain and I
15 see the top of his head. I'm not sure that
16 matters. Mr. Mariani, do you know whether small
17 processors are going to be heard from today?

18 MR. MARIANI: Judge, do I know if any
19 of the small processors are going to be on this
20 call today?

21 JUDGE STROTHER: Yes.

22 MR. MARIANI: That's your question?

1 JUDGE STROTHER: I think that was --
2 I mean, yeah, that was Mr. MacTavish's question,
3 I think. But I'm asking for him. He asked
4 whether they were going to be there. I'm asking
5 whether you know they're going to be on there on
6 not.

7 MR. MARIANI: I have no idea who is
8 going to be on the call today. Really, it was
9 available to anybody who wanted to be on it, and
10 they were well aware of the call.

11 JUDGE STROTHER: Fair enough. You
12 don't know. Okay, Mr. Kumar. Go ahead.

13 MR. KUMAR: He's again asking that the
14 first question that I was asking to make a
15 correction. He said that question is not for Mr.
16 Crain. I guess it's for Mr. Mariani. Same thing
17 that as explained by previous presenters,
18 explained the grower actually pays assessment.
19 So can we change the record to reflect that
20 assessment is collected from the grower, not a
21 handler expense?

22 JUDGE STROTHER: Well, he can ask Mr.

1 Mariani. Do you know whether the assessment is
2 collected from the grower or the processor?

3 MR. MARIANI: According to the
4 marketing order, the handler is responsible for
5 the assessment, for paying the assessment to the
6 Walnut Board. What the handler does beyond that
7 is between the handler and the grower.

8 In many cases, the handler has an
9 agreement with the grower that the grower will
10 pay some or all of that assessment. But in
11 actuality, the handler is responsible for paying
12 the assessment to the Walnut Board.

13 JUDGE STROTHER: Thank you.

14 MR. KUMAR: That's all, Your Honor.

15 JUDGE STROTHER: Okay. I take it you
16 have something you want to say, Ms. Chilukuri?
17 You popped up on my screen as a speaker.

18 MS. CHILUKURI: I did have a few
19 follow-up questions for Mr. Mariani.

20 JUDGE STROTHER: Do you want to see if
21 there's anybody else that's on the phone --
22 either Zoom or the phone? Then we'll come back

1 to you. Anybody else on Zoom or the telephone
2 that has any questions for this witness?

3 Hearing none, we're going to come back
4 around. It's your turn again, USDA. Ms.
5 Chilukuri?

6 MS. HOAGLAND: Excuse me. Sorry,
7 Judge. We're getting a message from Mr. Kumar
8 that John -- the previous person who was just
9 questioning. He has sent another text message.

10 JUDGE STROTHER: Okay. Let's go ahead
11 and hear that one and then USDA. Mr. Kumar, ask
12 Mr. MacTavish's next question.

13 MS. VAWTER: He is telling me he's
14 still muted.

15 JUDGE STROTHER: Unmute Mr. Kumar,
16 please. Does he not -- does Mr. Kumar not have
17 control over whether he's muted or not?

18 MS. VAWTER: Yes. That is what I
19 understand.

20 JUDGE STROTHER: He does not have
21 control?

22 DR. HINMAN: He's unmuted again.

1 JUDGE STROTHER: You have the floor,
2 Mr. Kumar.

3 MR. KUMAR: Yes, sir. So Mr. John
4 MacTavish is saying that Mr. Crain said the
5 grower pays it, but there's a discrepancy here.

6 JUDGE STROTHER: I don't have that
7 question in mind. Do you, Mr. Mariani?

8 MR. MARIANI: Yes. Like I said
9 earlier, the handler is responsible for paying
10 the assessment to the California Walnut Board.
11 But every handler -- between the handler and his
12 growers, they can have their own agreement. And
13 I would say pretty much across the industry, most
14 handlers have an agreement with their growers
15 where the grower pays either a portion or all of
16 the assessment.

17 JUDGE STROTHER: Anything coming in,
18 Mr. Kumar?

19 MR. KUMAR: Yes, sir. He's saying
20 that there's a discrepancy that Mr. Crain said
21 handler collects it, grower pays it. But Mr.
22 Mariani said the other way, so --

1 MS. CHILUKURI: Your Honor, I object
2 again just because again it seems like testimony.
3 And I'd also object that I don't recall that Mr.
4 Crain -- I don't recall Mr. MacTavish's memory as
5 it relates to Mr. Crain's testimony.

6 JUDGE STROTHER: Sustained. I think
7 that Mr. Crain's testimony will be as it is in
8 the transcript. And I think Mr. Mariani is not
9 here to testify as to what Mr. Crain said. I
10 don't know whether there's a conflict in what Mr.
11 Crain said and what Mr. Mariani has said. I
12 think Mr. Mariani has explained his understanding
13 of how this works. Anything further, Mr. Kumar?

14 MR. KUMAR: Not yet. I don't see any
15 other texts yet.

16 JUDGE STROTHER: Can you tell whether
17 something is being typed?

18 MR. KUMAR: No. Let me ask him. I'm
19 going to ask him the question.

20 MS. CHILUKURI: And while we're
21 awaiting that, I want to check in with Mr. Hatch
22 and Mr. Davis as it relates to the phone line.

1 And just if we can actually get Mr. MacTavish or
2 anybody else to testify on their own instead of
3 through Mr. Kumar. Is that still an outstanding
4 technical issue?

5 MS. HOAGLAND: It looks like Mr.
6 MacTavish is saying that he cannot participate
7 via Zoom which I think we talked about is the
8 case. So maybe if we can just make it clear that
9 if he wants to testify, he needs to send an
10 email, right, to walnut.hearing@usda.gov. And
11 then he can get on the list of people to testify.
12 He can do it that way. Just looking at the
13 webinar chat.

14 MS. CHILUKURI: If he's able to
15 express -- I mean, I defer to the judge on this.
16 If he's able to express his interest through
17 chat, is there a way he can set that up? I don't
18 know if it's a technical issue or something like
19 that. But it would be easier instead of having
20 to go through someone else.

21 JUDGE STROTHER: I think that anyone
22 that's got a telephone should be able to testify.

1 Is there a technical impediment to testify by
2 telephone, Mr. Hatch?

3 MR. HATCH: The gentleman can also
4 call me. My number is listed in the directions
5 if somebody wants to testify, they can call me.
6 It's 202-720-6862 number. I'd be happy to kind
7 of walk him through how to call in to this Zoom
8 via phone.

9 MS. HOAGLAND: Mr. MacTavish is asking
10 Your Honor whether testifying is the same as
11 asking questions of the presenters.

12 JUDGE STROTHER: No, it's not. No,
13 it's not. But if Mr. MacTavish needs something
14 affirmative into the record, he should testify
15 himself.

16 MS. HOAGLAND: Okay. Thank you.

17 JUDGE STROTHER: I don't know else to
18 answer that question. Mr. Kumar, you lit up on
19 my screen.

20 MR. KUMAR: Yes, sir. I asked him, do
21 you have any questions? I got no text back. I
22 sent him Andy Hatch's number if needed any help.

1 So I don't have any text back from him yet.

2 JUDGE STROTHER: Okay. Why don't we
3 move on.

4 Ms. Chilukuri, I think you're up.

5 BY MS. CHILUKURI:

6 Q Mr. Mariani, I just wanted to clarify
7 a few things from your testimony. You had talked
8 about new uses of walnuts and new products that
9 could come out as a result potentially as this
10 authority or trying to incentivize that.

11 Can you talk a little bit more about
12 that? Is that a requirement that's associated
13 with this credit-back authority? A handler has
14 to create a new product to get the benefits of
15 this authority?

16 A No. I'd say yes and no. It doesn't
17 have to be a new product. But I think many
18 handlers are looking along that avenue. If we
19 have so many possibilities like I mentioned,
20 especially in the snack aisle where we're so
21 underrepresented right now.

22 Definitely it could just be a normal

1 shelled or in-shell walnut. But I think the
2 opportunities that the industry sees through this
3 credit back opportunity would be a good part of
4 it which would be in new products where we think
5 there's some opportunities.

6 Q Okay. And you had mentioned
7 anecdotally that the almond program had seen a
8 lot of success with the credit-back program. Do
9 you have any statistics or information or
10 anything that you or anybody else intends to
11 enter into the record relating to almonds?

12 A Well, if that has any specific
13 information, I'd say the answer is as you walk
14 through the supermarket and see the myriad of
15 ways that almonds are utilized and promoted. And
16 they have tremendous success. And we see the
17 same opportunities as almonds.

18 Q You received some questions about the
19 impacts on growers. And you talked about the
20 impacts on handlers. And I think you talked
21 about the impacts of growers as well. But can
22 you elaborate more on the benefits and costs

1 associated with this authority on growers?

2 A The impact on growers I don't see as
3 any different than what it is right now as far as
4 the costs. I can see it as a benefit if the
5 program starts off and starts being successful
6 and we start increasing demand. But I don't see
7 it in any way as a cost to growers, only a
8 benefit.

9 Q And talking, I guess, about large
10 handlers and smaller handlers. I think Ms.
11 Schmaedick and other questions have asked you
12 about the effects or the impacts on each of those
13 types of handlers. Do you think will everyone
14 have equal access to the program in terms of
15 being able to participate regardless of the size
16 of the handler?

17 A They certainly have equal access.
18 There's no doubt about that. Everybody has that
19 opportunity based on their percentage of handle.
20 And then it's up to each handler to decide if
21 it's beneficial to them or not. But as far as
22 access, certainly, yes.

1 Q Can you elaborate more in terms of, I
2 guess, their incentive to participate? The small
3 handlers, much less incentive? Or can you
4 elaborate on what you mean by that? Or is that
5 just business decisions that people have to make?

6 A I'm sorry. I didn't really get all of
7 your question.

8 Q The desire to participate in the
9 program, whether or not that varies by whether or
10 not you're a large or small handler. And if I'm
11 understanding correctly, you said everyone would
12 have access. And I'm just wondering if you
13 decide not to participate, if that's just a
14 business decision. Or is there somebody about it
15 that would compel you not to participate.

16 A I say it's strictly a business
17 decision on every handler. If they feel that
18 it's a benefit to them to try to promote a
19 product, an existing product or a new product,
20 that's strictly a business decision and nobody is
21 obligated to participate in it, as long as they
22 think it'll be beneficial.

1 Q That's all the question I have. Thank
2 you.

3 JUDGE STROTHER: Is that it, Ms.
4 Chilukuri?

5 MS. CHILUKURI: Yes, Your Honor.
6 That's it for me.

7 JUDGE STROTHER: Anyone else from the
8 USDA?

9 MS. MCGOWAN: Yes, Your Honor. This
10 is Tracy McGowan. I'd just like to ask a follow-
11 up question on cost and benefits, if that's okay.

12 JUDGE STROTHER: Yes, Ms. McGowan.

13 MS. MCGOWAN: Thank you, Your Honor.

14 BY MS. MCGOWAN:

15 Q Just to follow up on the cost and
16 benefits. You had said that you saw this is
17 really nothing but benefits for the handler.
18 Could you explain a little bit? My understanding
19 is that the credit-back would only be a
20 percentage, and I believe it's 70 percent of the
21 actual expenditure on marketing. And whether or
22 not you would consider the remaining 30 percent

1 that was not reimbursed, would that be considered
2 a cost or could you explain that a little bit?

3 A Well, I think you're correct in
4 identifying it as a cost. If any handler is
5 going to look at it as a -- going forward to see
6 if it would eventually turn into a benefit.
7 They're not going to go in there and blindly
8 throw their marketing dollars away and adding to
9 it with 30 percent loss unless they see a
10 benefit.

11 And that's why I think the overall
12 program is going to be a huge benefit to the
13 industry because you're not only putting the
14 assessment dollars into it. The handler will be
15 investing with his own dollars as well, just
16 increasing the overall marketing budget for
17 California Walnut. It just needs to be a win-win
18 situation.

19 MS. MCGOWAN: Your Honor, that's it
20 for me.

21 JUDGE STROTHER: Anyone else from USDA
22 have any questions?

1 (No response.)

2 JUDGE STROTHER: Industry proponents
3 have any questions?

4 MS. CONNELLY: No, Your Honor.

5 JUDGE STROTHER: Anyone else by Zoom?
6 Any other participants have any questions?

7 (No response.)

8 JUDGE STROTHER: Anyone that's called
9 in by telephone have any questions?

10 (No response.)

11 JUDGE STROTHER: Anything come in by
12 chat?

13 (No response.)

14 JUDGE STROTHER: Okay. I guess I
15 should ask during all that, there were no
16 objections at all during the testimony, correct,
17 by any means?

18 MS. HOAGLAND: There were none through
19 Zoom.

20 JUDGE STROTHER: Okay, very well. Mr.
21 Mariani, you may step down from virtual witness
22 stand.

1 MR. MARIANI: Thank you, Your Honor.

2 JUDGE STROTHER: I'll just handle it
3 this way. We have two exhibits identified for
4 the record, Exhibit 17, which was Mr. Mariani's
5 statement that you read into the record, and
6 Exhibit 18, which is a PowerPoint overview of the
7 proposal and public program communication
8 samples. Does anyone have any objections to the
9 admission to the record of those two exhibits?

10 Hearing and seeing none, Exhibit 17
11 and Exhibit 18 are admitted to the record.

12 (Whereupon, the above-referred to
13 documents were received into evidence as CWB's
14 Exhibits 17 and 18.)

15 JUDGE STROTHER: Okay. Before we call
16 our next witness, it's about five after 1:00
17 Pacific Time. We haven't had a lunch break.
18 Should we have a lunch break?

19 MS. VAWTER: Yes, please, from us West
20 Coasters.

21 JUDGE STROTHER: Is half an hour
22 sufficient?

1 MS. VAWTER: I guess it would have to
2 be. It might not work for me in particular
3 because we don't have anything around here really
4 to eat. But we'll get it done.

5 JUDGE STROTHER: Well, whatever
6 parties want to do. I'm open. How are you
7 doing, Mr. Stroman?

8 MR. STROMAN: I'm doing all right,
9 Your Honor.

10 JUDGE STROTHER: Is half an hour
11 sufficient for your purposes?

12 MR. STROMAN: Yes, Your Honor.

13 JUDGE STROTHER: Okay. Let's do a
14 half an hour and be ready to go. I guess we need
15 to take up immediately when we get back is
16 whether there are any additional witnesses to add
17 to the witness list. I see Mr. Hatch is on the
18 telephone. Maybe we're developing some
19 information on that right now.

20 Okay. I have six minutes after 1:00
21 o'clock West Cost time. Let's reconvene at 25 of
22 2:00. Is that right? Or is that -- I'm sorry.

1 Yeah, 25 to 2:00, half hour break. And off the
2 record.

3 (Whereupon, the above-entitled matter
4 went off the record at 4:06 p.m. and resumed at
5 4:35 p.m.)

6 JUDGE STROTHER: After we went off the
7 record last time, we had an off the record
8 discussion of various technical matters as to how
9 other people should phone in or come in through
10 Zoom, witnesses in particular.

11 I won't go back over that, but
12 hopefully we've made some adjustments to help
13 with the audio quality. I don't think -- if we
14 covered anything else, someone can remind me, but
15 it was all procedural and I don't think we need
16 to make a record of it.

17 I had said that we would provide an
18 opportunity for additional witnesses. I again
19 remind folks that can hear me that have not
20 signed up to be witnesses that wish to, they can
21 sign up by sending a text or the other means I
22 discussed to the right place and we can put you

1 on the witness list.

2 And also, I take it we're not ready to
3 discuss transcript corrections and briefing, is
4 that right?

5 MS. CONNELLY: That's correct, Your
6 Honor.

7 MS. CHILUKURI: Your Honor, we haven't
8 -- yeah.

9 (Simultaneous speaking.)

10 MS. CHILUKURI: This is Rupa
11 Chilukuri, USDA. I just wanted to follow up that
12 we haven't had a chance to discuss with the
13 proponent group, so we do have timing in mind and
14 will consult with them and get back to you, Your
15 Honor.

16 JUDGE STROTHER: Thank you. Yeah, I
17 realize it was a short lunch break and I hope
18 everyone was able to get some refreshments. Have
19 we had any additional witnesses sign up?

20 MR. HATCH: This is Andrew Hatch. No,
21 we have not. I did speak with John MacTavish for
22 a few minutes and he is deciding whether or not

1 he wants to testify tomorrow.

2 I told him if he does want to, simply
3 call me this evening and we'll get his document
4 into the list of exhibits and he can testify
5 tomorrow. He's deciding whether he wants to do
6 that or not.

7 JUDGE STROTHER: I should know the
8 answer to this, but do we have to have a written
9 statement in order for someone to testify?

10 MS. CHILUKURI: We do not.

11 JUDGE STROTHER: No, I didn't think
12 so, so if he doesn't want to submit a document,
13 he can testify on the fly, so to speak. We're
14 ready for our next witness then. Okay, I call to
15 the virtual stand Bill Carriere. Mr. Carriere,
16 are you on? California Walnut is unmuted again
17 and we need to mute them.

18 MR. CARRIERE: I'm on now.

19 JUDGE STROTHER: Okay, I suppose we'll
20 go ahead and swear you in, Mr. Carriere. Please
21 raise your right hand. Do you affirm or swear to
22 tell the truth and nothing but the truth under

1 penalty of perjury?

2 MR. CARRIERE: I do.

3 JUDGE STROTHER: Okay, the witness has
4 taken the stand, and as we do in these formal
5 rulemaking proceedings, we'll have you read your
6 statement into the record. I guess I'll -- I
7 only have the one exhibit for you. Is that
8 right, Mr. Carriere?

9 MR. CARRIERE: That's correct, just my
10 testimony.

11 JUDGE STROTHER: Okay, we'll put that
12 in at the close of your testimony assuming I can
13 remember to do that. So, the floor is yours.

14 MR. CARRIERE: Okay, thank you. As
15 you mentioned, my name is Bill Carriere or
16 William Carriere, W-I-L-L-I-A-M C-A-R-R-I-E-R-E.
17 I'm the president and CEO of Carriere Family
18 Farms and also president of Borges of California,
19 Incorporated. Both are walnut handling
20 operations as well as growers.

21 Carriere Family Farms is an LLC family
22 partnership between myself, and counting our

1 spouses, 21 other family members made up of
2 third, fourth, and fifth generation California
3 farmers.

4 Borges of California is a corporation
5 jointly owned by the Carriere family as well as
6 Borges Agricultural and Industrial Nuts, which
7 was formed in 1985, and it's part of the Borges
8 Mediterranean Group headquartered in Barcelona,
9 Spain. And despite that fancy and complicated
10 ownership explanation, I am testifying today as a
11 small handler.

12 I do serve on the California Walnut
13 Board in the capacity of member, and I sit on the
14 executive committee, the market development
15 committee, the grades and standards committee, as
16 well as the market order revision committee.

17 And today, I'd like to discuss points,
18 several points, justification points, one, which
19 is the proposal purpose, two, the problem to be
20 addressed, three, what the current industry
21 practices relative to the proposal are, and
22 eight, the proposal implementation.

1 So, the amended language of the
2 proposed change was published in the Notice of
3 Hearing, Section 946.46, items A through C, and
4 I'm not going to read those. Those have been
5 gone over and entered into the record already.

6 But the proposed language would amend
7 the walnut marketing order number 984 by adding
8 authority to provide credit-back for market
9 promotion expenses paid by handlers against their
10 annual assessments due under the program.

11 If implemented, this program would
12 encourage handlers to undertake market promotion
13 activities in addition to the California Walnut
14 Board's generic marketing efforts. Currently,
15 this authority is not granted in the order
16 language.

17 The proposed amendment would include
18 adding authority under 984.46, research and
19 promotion, for credit-back of market promotion
20 activities against handler assessments, adding a
21 new section 984.546, credit for market promotion
22 activities, including paid advertising under a

1 new subpart D, research and development
2 requirements, outlining the functional
3 requirements of the credit-back program.

4 The industry has continued to increase
5 with annual gains in production. Our foreign
6 competition is producing more with larger crops
7 coming from leading competitors like Chile,
8 China, and mainly Eastern Europe, and the current
9 trade challenges before us with tariffs have
10 caused the industry to assess itself and assess
11 where we want to be in five years and beyond.

12 In looking at our markets, our
13 programs and opportunities to further develop,
14 the credit-back program was identified as a
15 potential solution to help the industry,
16 specifically helping handlers grow their business
17 and supporting activities.

18 The proposal to add credit-back
19 authority for promotional activities will
20 encourage handlers to build upon the work the
21 Board is doing by conducting their own
22 activities.

1 The credit-back program would allow
2 for handlers to promote their brands through the
3 various activities such as advertising,
4 promotion, et cetera, like has been discussed, in
5 addition to the generic work the Board does.

6 Overall activities are similar.
7 However, the brands have the ability to market
8 their products and brands, which the California
9 Walnut Board does not. Similar programs are
10 used, as mentioned, successfully by the Almond
11 Board and the Prune Board.

12 The Agricultural Marketing Act of 1980
13 provides credit-back authority to walnuts and
14 other specified commodities. With this
15 authority, we have pursued the development of the
16 proposal through the Market Order Revision
17 Committee, or MORC as we call it, to conduct
18 several meetings where members discussed/debated
19 all of the merits of the proposed language,
20 possible alternatives, potential benefits,
21 potential costs to staff, and possible compliance
22 issues.

1 There was a robust discussion
2 regarding the kinds of activities that would be
3 considered as credible expenditures and the level
4 of reimbursement.

5 The group discussed the potential for
6 including varying rates and determined what could
7 be future language to apply, but for now, the
8 language reflects a straight-line credit-back for
9 all eligible activities.

10 In regard to implementation, following
11 approval from the Secretary, the California
12 Walnut Board would implement the program to
13 become effective this following crop or fiscal
14 year.

15 Annually, the California Walnut Board
16 will establish a budget with annual assessment to
17 be collected, including a budget for this credit-
18 back program.

19 The California Walnut Board would then
20 communicate to handlers that the credit-back
21 option is available, and their pro rata portion
22 of available credit-back funds, and procedures on

1 the program and its use, including activities
2 that are eligible for the credit-back.

3 That's my prepared statement. I am
4 open to answer questions.

5 JUDGE STROTHER: As is our usual
6 procedure, USDA goes first. Any questions from
7 USDA personnel?

8 MS. SCHMAEDICK: Yes, Your Honor, this
9 is Melissa Schmaedick with USDA.

10 BY MS. SCHMAEDICK:

11 Q Good afternoon, Mr. Carriere. Thanks
12 for your testimony. I see that you are
13 testifying as a small handler, so I have some
14 questions that are specific to your role as such.

15 I'm curious, if this program were
16 implemented, do you anticipate using the credit-
17 back program for your own companies' activities?

18 A Yes, absolutely. You know, there's
19 matching funds, so we would apply for the program
20 and then we would decide to use our funds to
21 match those funds to use in marketing efforts on
22 our own.

1 Now, as a small handler, we're not
2 going to launch some, you know, national new
3 caramel walnut or something, but we would use it
4 on the level that we could, and this would add to
5 or incentive our ability to do that.

6 Q And having said that, do you feel
7 there's any disadvantage to you being a small
8 business as opposed to larger handlers that would
9 have access to this program as well?

10 A No, I don't think so. I mean, as a
11 smaller handler, we have less funds to spend, and
12 we would get less -- we would also pay in less,
13 so we would get our pro rata share and we would
14 apply it to the program just as we do now.

15 So, we have a small marketing budget
16 now. This would help increase our marketing
17 budget proportionately. Granted, the absolute
18 dollars would be less, but as a percentage, it
19 should be the same if we utilize the program to
20 the same extent that a large handler would.

21 Q Do you anticipate your business
22 transaction relationships with your growers

1 changing at all because of this program?

2 A No, my ultimate goal, we're our
3 largest grower. My own farm is our largest
4 grower. Our whole goal is to return more to the
5 grower, and so I would only engage in activities
6 that I thought made good business sense that
7 would increase returns to the grower, myself
8 being one of them.

9 As a small handler, we still have
10 about 80 growers or 85 growers, and so we would
11 hope that this effort would return a higher
12 return to the grower.

13 Q And so you mentioned that you receive
14 products from 80 growers roughly. Are they
15 typically -- how would you classify them, as
16 small, medium, large growers?

17 A Mostly small growers, definitely
18 mostly small growers. We are probably, as a
19 grower ourselves, we're probably on the
20 borderline of being a larger grower, but
21 depending on the year, because of the limits of
22 the definition, you know, in our lower years, as

1 Mr. Crain mentioned, where our yields or our
2 revenues went down, we were definitely a small
3 grower.

4 In the better years, maybe we would
5 have hit the threshold of a large grower, but
6 most of our growers, 83 of them, would be
7 classified as a smaller grower definitely.

8 Q And have you had an opportunity to
9 discuss this proposal with your other growers?

10 A Absolutely, we, even as a small
11 handler, we send out grower newsletters of our
12 own, as well as having a grower day where they
13 come visit us and ask questions of us specific on
14 how our handling operation is marketing and how
15 we're going to return them a good return compared
16 to another handler.

17 We're all in competition to keep our
18 growers and to pay the best possible price, so we
19 do our best to explain to our growers how we're
20 spending our money and efforts to give them the
21 best return.

22 Q Thank you. And you mentioned that you

1 were part of the committee. I believe you
2 referred to it as the MORC.

3 A Yes.

4 Q What does MORC stand for again?

5 A Market Order Revision Committee.

6 Q Okay, thank you. I'm looking here and
7 I can't find the exact place in your testimony,
8 but I believe you said that -- well, here it is.

9 On page two of your testimony, in the
10 first full paragraph right about the middle, you
11 said several meetings were conducted. Members
12 discussed/debated the merits of the proposed
13 language, possible alternatives, potential
14 benefits, potential costs, and possible
15 compliance issues.

16 That's quite a long list, but I'm
17 wondering if you could just give us a sense of
18 the types of alternatives, benefits, costs, and
19 compliance issues that were discussed and
20 resolved?

21 A Sure, there were, as I mentioned,
22 robust discussions, especially concerns as your

1 questions are leading towards on the smaller
2 handler side. How would I utilize the program
3 being a smaller handler? How is this going to
4 affect the growers?

5 There were discussions, for example,
6 of what the percentage should be of match.
7 Should we have to put up, you know, 50 percent,
8 70 percent, 90 percent? Should there be a match?

9 What creditable expenditures would be
10 allowed? In other words, one of the concerns of
11 a question earlier was, you know, is this just
12 subsidizing efforts that are already going to be
13 done?

14 And so, how would we make sure that
15 those were not -- that that didn't happen, that
16 this was actually incentivizing handlers to go
17 out and spend some of their own money on
18 marketing and promotion activities. There was a
19 big discussion about that.

20 There was also a big discussion about,
21 you know, what if you don't have a nationally
22 recognized brand? Some of the larger handlers

1 have brands in the store that consumers recognize
2 already and smaller handlers potentially do not,
3 so there was, I wouldn't say argument, but
4 discussion about is it going to benefit the
5 bigger brands more?

6 I'm comfortable as a small handler,
7 though I do not have a recognized brand in the
8 store, that I am satisfied that two things, one,
9 that the brands are more incentivized to spend
10 more money which puts more money in the pot of
11 their own money, and secondly, that a rising tide
12 is going to lift all boats.

13 So, if the bigger handlers run out of
14 walnuts or move walnuts into different channels
15 with new products and such, that that gives me
16 more opportunity to go to markets at a higher
17 price as well, and thus return better returns to
18 my growers.

19 Q Thank you. You also, in that same
20 paragraph, touch briefly on a potential for
21 varying rates, and you state that the group
22 determined that there could be future language to

1 apply varying rates, but for now, it's going to
2 be a straight-line credit-back level.

3 Can you talk about that a little bit
4 and explain what a varying rate means and what
5 would potentially change to make that a useful
6 tool?

7 A Well, we discussed, for example, as
8 Mr. Mariani mentioned, that maybe we should
9 incentivize new products versus existing
10 products, and so there could be varying rates, a
11 credit-back for a new product versus an existing
12 product.

13 In the end, we didn't want to make it
14 too complicated so that we, directly to the
15 point, that smaller handlers could participate,
16 and we wanted to make it as simple as possible to
17 get started, and in the future, we wanted to have
18 the ability to revisit it in case we saw that we
19 could get better benefits by varying the rates
20 for different products for example.

21 Q Okay, thank you. And to your
22 knowledge, is there any eligibility criteria for

1 participating? Is there anything at all that
2 would prevent someone from, some handler from
3 participating?

4 For example, is there a minimum amount
5 that you can use, or the scope of activities that
6 the group intends to cover, does it cover enough
7 or a broad enough scope of activities so that all
8 handlers, at least it's anticipated that all
9 handlers can participate?

10 A Yeah, that was actually discussed, and
11 again, as a small handler, I have less resources
12 of my own to start with, so that's why we made it
13 pretty broad.

14 So, I think initially, we're erring on
15 the side to allow as many people to participate
16 or as many handlers to participate as possible
17 specifically to make sure that the smaller
18 handlers can do so.

19 The only restriction is you have to be
20 a handler. There's no minimum that I'm aware of.
21 There are certain creditable expenditures that
22 are not allowed and that was discussed at length

1 because again, we don't want it just to be a
2 subsidy to existing activities. We want it to be
3 an increase in funding towards promotion.

4 Q And to get back to how you might or
5 how other small handlers might take advantage of
6 this program. What are the types of activities
7 that might be undertaken by small businesses in
8 particular?

9 A Well, I'd have to look at the
10 specifics to make sure I don't say something that
11 doesn't qualify, but our specific plans for
12 ourselves are we're looking into, as I mentioned
13 before, a snack product.

14 And I don't want to give away any
15 secrets, but we're hoping to partner with another
16 company to create a snack product because
17 snacking seems to be the trend, and we're going
18 to start on a small scale because we're a small
19 handler, but who knows?

20 Every little bit is going to help, and
21 I think as a percentage, I'm able to participate
22 equally on a percentage level as any big handler.

1 Q Okay, thank you. I want to touch
2 briefly on the first sentence of the last
3 paragraph on page two of your statement, and it
4 says, "In regards to implementation, following
5 approval from the Secretary, the CWB would
6 implement the program to become effective the
7 following crop/fiscal year." Is there a sense of
8 urgency related to this timing?

9 A Yeah, I mean, there's a lag time
10 between when you -- you have to design your
11 marketing program and put the budgets together.

12 We're already putting budgets
13 together, you know, for this next crop that we're
14 going to harvest in September/October, and then
15 market following that.

16 So, with this whole delay in COVID-19,
17 it's kind of frustrating, but we would hope this
18 would get implemented as quickly as possible so
19 we could implement it this coming harvest or
20 marketing year, which starts in September.

21 Q I'm sorry, did you say your marketing
22 year starts in September?

1 A We harvest in September/October, yes.

2 Q I see, okay. Okay, and we've heard
3 other witnesses testify to this sort of increase
4 in production that is expected to put more
5 downward pressure on prices. Does that also
6 contribute to the urgency of needing to get this
7 program in place?

8 A Absolutely, it's not just the increase
9 in crop volume here in the U.S., but it's
10 increased competition from Chile, from China,
11 from Eastern Europe, and then of course this
12 pandemic thing is making everything even worse.

13 So, it's more important that we market
14 especially to the domestic side because that's,
15 again, as mentioned, it's our largest market, but
16 I think it has one of the largest potentials for
17 growth. We need to get off of this half a pound
18 per person and get Americans aware of eating
19 healthy products.

20 Q Thank you, and just one last question
21 here. You referenced a term or a phrase "pro
22 rata portion" of the available credit-back funds.

1 Now, this may be touched on further on by other
2 witnesses, but what is your understanding of the
3 term pro rata share? What does that mean?

4 A So, let's say the crop is 700,000
5 tons, and just for math purposes, I handle
6 100,000 tons. You know, I'd be one-seventh of
7 the crop, so I'd be eligible for one-seventh of
8 the budget that would be set aside for the
9 credit-back eligibility.

10 Now, I would have to spend that money
11 appropriately, but if I were to maximize it, I
12 could only spend up to that pro rata share or
13 that portion matching how much I handle.

14 Q Okay, so essentially it's your share
15 of the total? Would that be correct?

16 A Yes, correct.

17 MS. SCHMAEDICK: Okay, great, thank
18 you. I believe I don't have any further
19 questions for you. Thank you.

20 JUDGE STROTHER: Okay, any other USDA
21 personnel have any questions for this witness?

22 DR. HINMAN: Yes, Don Hinman. Can you

1 hear me?

2 JUDGE STROTHER: Yes, Mr. Hinman, your
3 witness.

4 BY DR. HINMAN:

5 Q All right, Mr. Carriere, thank you
6 very much for your testimony. My question is I
7 believe you said that you accept -- you buy nuts
8 from 83 growers, all of whom are small or most of
9 whom are small, is that correct?

10 A Give or take. It changes every year,
11 but this year, it's going to hopefully be 80 to
12 85, somewhere in there.

13 Q Okay, and your farm, you testified
14 you're a small handler, but your farming
15 operation would be qualified as a small farm, is
16 that correct?

17 A Yes, we're on the larger end of small
18 farm, but we're still considered a small farm,
19 and like I mentioned, in some years when the
20 price isn't so great, we're definitely a small
21 farm.

22 Q We have the specific Small Business

1 Administration definition of a million dollars
2 per year in annual sales. That is the correct --
3 that is what you're applying here, correct?

4 A That's correct.

5 Q Great, okay, thank you. And then I
6 just want to ask you a question that I've asked
7 of the previous witnesses there in terms of the
8 phrase benefit and costs.

9 The other witnesses have said that
10 costs, they expect the costs to be, you know,
11 zero, zero to minimal, and the benefits to be
12 substantial, and if you could say the extent that
13 you agree or disagree with that and elaborate a
14 bit on that if you could, please?

15 A I completely agree with that. There
16 should not be any more cost to implement the
17 program. The money that would be set aside out
18 of the, for the credit-back reimbursement would
19 come out of the current budget and just not be
20 spent on generic, but applied to the credit-back
21 program, so there shouldn't be any extra costs.

22 The benefits should definitely be

1 positive because more money will be spent, but
2 out of the handlers' pockets.

3 DR. HINMAN: All right, okay, thank
4 you. No further questions. Thank you, Your
5 Honor.

6 MS. VAWTER: Your Honor?

7 JUDGE STROTHER: Yes?

8 MS. VAWTER: This is Terry Vawter. I
9 have a question for Mr. Carriere.

10 JUDGE STROTHER: Your witness, Ms.
11 Vawter.

12 MS. VAWTER: Thank you.

13 BY MS. VAWTER:

14 Q Mr. Carriere, just thinking about the
15 future, you have a list of promotional activities
16 that are currently tentatively approved, ones
17 that are part of the proposal.

18 Is it possible that as time goes on,
19 there would be other activities that would be
20 viewed as potential authorized activities, and
21 might there be changes in technology and stuff
22 that would make other kinds of things attractive

1 to change maybe the conditions of the guidelines?

2 A Yes, absolutely, not only adding
3 things, but maybe even taking some away. As I
4 mentioned, that was discussed in a lot of the
5 robust discussion that I mentioned on what to
6 include and what not to include.

7 So, I think we made it broad enough so
8 that we could get the authority into the order
9 and then maybe we can do it as, what's the term,
10 informal rulemaking to change some of those
11 changes.

12 MS. VAWTER: Thank you so much. No
13 more questions.

14 JUDGE STROTHER: Anyone else from the
15 USDA have any questions?

16 MS. CHILUKURI: Yes, Your Honor. Rupa
17 Chilukuri, USDA. I had a few questions for Mr.
18 Carriere.

19 JUDGE STROTHER: Your witness.

20 BY MS. CHILUKURI:

21 Q Mr. Carriere, you referred to, just
22 for clarification on the record, you referred to

1 the Agricultural Marketing Act of 1980 in your
2 statement and I just wanted to confirm. Are you
3 talking about a 1980 amendment --

4 A Yes.

5 Q -- to the 1937 Act?

6 A Yes, sorry.

7 Q Okay, that's fine, and that 1980
8 amendment, do you know what it did? Can you tell
9 us what it did?

10 A Well, it provided this credit-back
11 authority, but we'd have to have formal
12 rulemaking to actually put it into effect is my
13 understanding.

14 Q Okay, and in your testimony, you also
15 referenced matching funds, and just so I'm
16 understanding you correctly, can you talk again
17 about what you mean by that? Are you saying that
18 you can put a certain portion of expenses towards
19 market promotion expenses and then the Board
20 matches that amount?

21 A Well, yeah, you just can't take money
22 from the -- you can't just apply for funds and

1 have the Board pay for 100 percent of it. You
2 have to have some of your own money, you know,
3 skin in the game, and so that's the matching
4 funds I'm talking about.

5 Q Okay, so it's not a one-to-one match.
6 You're just saying you have to have --

7 A No.

8 Q -- skin in the game?

9 A Correct.

10 Q Okay, I also saw a reference to, I
11 guess, the Prune Board also having used this
12 program. Do you have any information regarding
13 how it's worked for them?

14 A Only -- nothing specific, just I know
15 that it's been successful. I'm very familiar
16 with the Almond Board side. We also grow
17 almonds, or almonds up here.

18 So, I know it's been very successful
19 with the Almond Board and I just know that the
20 Prune Board uses it, and I know a few prune
21 growers.

22 We don't grow any prunes anymore, but

1 I know as much as prunes have suffered in the
2 past, they've tried everything, and this has been
3 one of their successful attempts.

4 Q And understanding that the credit-back
5 authorities and related rules and regulations are
6 different under different programs, understanding
7 that, can you talk a little bit about what you've
8 seen with the Almond Board based on your own
9 experience?

10 A Yeah, so, and just as Mr. Mariani
11 mentioned, we're not an almond handler, just a
12 grower, so we go to the grower meetings as our
13 almond handler has, and we read their
14 newsletters, and we talk to them.

15 And so we, as one of the questions I
16 think was previously, we engage with our handler
17 and make sure that they're spending and taking
18 advantage of these funds, and then I, as a
19 grower, I need to believe in the way they're
20 spending the money so that I'm comfortable
21 marketing through them.

22 And so I think I've been satisfied

1 talking to my Almond Board handler, or handlers
2 actually, in their use of the funds and their
3 participation in the program, and they've
4 convinced me that they have been successful in
5 increasing my price as a grower.

6 MS. CHILUKURI: Okay, thank you. I
7 have no further questions.

8 JUDGE STROTHER: Is that it for USDA
9 questioners? Okay, anyone from the industry
10 proponent side have questions for this witness?

11 MS. CHILUKURI: It looks like the
12 California Walnut Board is muted.

13 JUDGE STROTHER: I see. Can we unmute
14 the California Walnut Board, please?

15 MR. HATCH: They're unmuted.

16 MS. CONNELLY: Thank you, Your Honor.
17 No questions.

18 JUDGE STROTHER: Okay, I guess you
19 speak for everybody, Ms. Connelly, on the
20 industry side. Okay, it's the turn for questions
21 for anyone that's on Zoom that's a participant
22 that's not USDA and is not an industry proponent.

1 Does anyone have any questions for
2 this witness that's on Zoom? There's nothing
3 coming in by text, I take it, or other
4 communications indicating anyone's got any
5 questions.

6 Hearing none, anyone that's connected
7 to this hearing by telephone have any questions
8 for Mr. Carriere? Hearing none, we'll cycle back
9 through. Does USDA have any follow up, I guess,
10 to the very small amount of, I guess, no
11 testimony, but anything further?

12 Okay, hearing none, we have one
13 exhibit associated with this witness, which is
14 exhibit, for identification, 19, which is Mr.
15 Carriere's statement.

16 (Whereupon, the above-referred to
17 document was marked as Exhibit No. 19 for
18 identification.)

19 JUDGE STROTHER: Any objection to the
20 admission of that Exhibit 19 into the record?

21 Hearing and seeing none, Exhibit 19 is
22 admitted into the record.

1 (Whereupon, the above-referred to
2 document was received into evidence as Exhibit
3 No. 19.)

4 JUDGE STROTHER: And you may step down
5 from the virtual stand, Mr. Carriere. Thank you
6 --

7 MR. CARRIERE: Thank you.

8 JUDGE STROTHER: -- for being with us
9 today. Okay, I think our next witness is Rachael
10 Good. Ms. Good, please take the virtual stand
11 and raise your right hand. You need to unmute,
12 Ms. Good.

13 I'm sorry, that's Ms. Goodhue. I
14 guess it is Goodhue. The entry for Exhibit 20
15 actually cut off the last part of your name, Ms.
16 Goodhue. I see you now and you seem to be
17 unmuted.

18 Please raise your right hand. Do you
19 swear or affirm to tell the truth and nothing but
20 the truth under penalty of perjury?

21 DR. GOODHUE: I do.

22 JUDGE STROTHER: Okay, for you, I have

1 two exhibits for identification. That will be
2 Exhibit 20, which is your testimony and
3 statement.

4 (Whereupon, the above-referred to
5 document was marked as Exhibit No. 20 for
6 identification.)

7 JUDGE STROTHER: And 21, which is a
8 Kaiser economic analysis.

9 (Whereupon, the above-referred to
10 document was marked as Exhibit No. 21 for
11 identification.)

12 JUDGE STROTHER: Ms. Goodhue, you may
13 give your statement now.

14 DR. GOODHUE: My name is Rachael
15 Goodhue, R-A-C-H-A-E-L, Goodhue, G-O-O-D-H-U-E.
16 I am a professor and department chair in the
17 Department of Agricultural and Resource Economics
18 at the University of California, Davis.

19 I have worked there since 1998 after
20 earning my PhD in agricultural and resource
21 economics at the University of California,
22 Berkeley. My testimony today will analyze the

1 costs and benefits -- wait.

2 Advertising and promotion activities
3 are predicted by economic theory to increase
4 demand for the advertised product. This
5 prediction is supported by empirical analyses of
6 advertising and promotion activities for
7 individual agricultural commodities. See, for
8 example, the studies of California commodities in
9 Kaiser et al., 2005.

10 The increase in demand is an outward
11 shift that increases the price for any quantity
12 sold and increases the quantity sold at any given
13 price.

14 Handler-led marketing investment is
15 expected to increase total industry expenditures
16 on advertising and promotion. Consequently, net
17 returns and gross revenues to producers and
18 handlers are expected to increase.

19 Consumer surplus is the benefit that
20 consumers obtain from purchasing walnuts less the
21 cost of purchase. An outward demand shift
22 indicates that consumers would benefit.

1 Because the aggregate quantity
2 demanded at each price increases, consumers
3 reveal that they increase their consumer surplus
4 by purchasing more walnuts given the price of
5 walnuts and the other goods available to them and
6 their incomes.

7 If consumers did not benefit, they
8 simply wouldn't demand more at a specific price
9 as a result of the handler-led advertising
10 investments and demand would not shift up.
11 Consumers, in other words, would benefit or be
12 unaffected by the program.

13 Figure one, entered as an exhibit, is
14 on page five -- is it possible to scroll down to
15 the figure or else I can hold it up maybe?

16 MR. HATCH: Is it on page five of your
17 exhibit and not your testimony?

18 DR. GOODHUE: It's on page five of my
19 testimony and it's one document.

20 MR. HATCH: Okay.

21 DR. GOODHUE: There are three figures
22 and a table.

1 MR. HATCH: I was going into page five
2 of your exhibit, okay.

3 DR. GOODHUE: Oh, okay. So, figure
4 one, entered as an exhibit, illustrates the
5 effects of a demand shift on producers and
6 handlers and consumers. The quantity produced
7 and sold is on the horizontal axis and the price
8 is on the vertical axis.

9 The solid red line represents the
10 initial inverse demand curve. For any quantity,
11 the curve plots the price at which consumers will
12 purchase that amount.

13 The blue line represents the inverse
14 supply curve. It plots the price for which
15 industry will supply any given quantity.

16 The initial market equilibrium is
17 where the demand and supply curves cross. At
18 that point, consumers are willing to buy the same
19 quantity as industry is willing to supply at that
20 price.

21 Consumer surplus, the benefit
22 consumers obtain by what they pay, is the area

1 below the demand curve and above the price line,
2 represented by the black dotted line.

3 Producer surplus, returns over fixed
4 costs, is the area above the supply curve and
5 below the price line.

6 Now, the dashed red line represents an
7 outward shift in the demand curve, or an increase
8 in demand. Notice that consumers are willing to
9 pay a higher price for any given quantity.

10 The quantity sold and the price
11 increase relative to the initial equilibrium, as
12 shown by the intersection of the new demand curve
13 and the supply curve and the red arrows on the
14 horizontal and vertical axes.

15 Thus, an increase in demand due to
16 increased advertising and promotion in a credit-
17 back program would increase both industry and
18 consumer welfare.

19 Figure one holds the supply curve
20 constant. However, total walnut acreage has been
21 steadily increasing since 2011, implying that
22 bearing acres are not being removed as quickly as

1 acres are being planted.

2 In 2019, there were 365,000 bearing
3 acres and approximately another 60,000 are
4 anticipated to come into production over the next
5 few years.

6 Figure two -- scroll down one page,
7 please. Thank you -- illustrates the case where
8 supply increases, holding demand constant.
9 Comparing the market quantity and price for the
10 original, solid blue, and increased, dashed blue,
11 supply curves, the quantity sold increases and
12 price declines. That is, in the absence of a
13 demand shift, the increase in bearing acreage
14 would reduce price, all else equal.

15 Consumer surplus would increase
16 because consumers would purchase more at a lower
17 price. Producer surplus may increase or decrease
18 depending on demand, supply, and the nature of
19 the increase in supply. In the figure, it
20 increases. Next page, please.

21 Figure three illustrates what could be
22 the net effect of an increase in demand and an

1 increase in supply. As in the previous two
2 figures, the initial market equilibrium is where
3 the two solid lines intersect.

4 The new market equilibrium is at the
5 intersection of the increased demand curve and
6 the increased supply curve, denoted by the two
7 dashed lines.

8 In this case, the quantity exchanged
9 increases substantially, and price increases as
10 well. Consumer and producer surplus both
11 increase in the figure.

12 Depending on the nature of the shifts
13 in supply and demand, the observed price may
14 actually decline, as may producer surplus.
15 However, the observed price will always be higher
16 than the price would have been if demand did not
17 increase. An increase in demand due to handler-
18 led marketing investments in advertising and
19 promotion would increase the market price.

20 So, I'm done with the figures. I
21 don't know if you want to scroll back up or not.
22 I'm on page two, about two-thirds of the way

1 down. Yes, the effect on returns to producers
2 and handlers.

3 Over time, the California Walnut Board
4 would expect the credit-back program to increase
5 returns through shifting out market demand.

6 Credit-back is a tool that would enable the
7 California Walnut Board to leverage assessment
8 funds into greater total advertising and
9 promotion activity by encouraging handler
10 investment in advertising and promotion.

11 Handler-led advertising and promotional
12 activities are anticipated to shift out demand as
13 discussed above.

14 Regardless of whether or not a
15 producer sells to a handler that utilized the
16 credit-back program, he or she will benefit from
17 the demand shift.

18 Handler-led investments would provide
19 for additional consumer awareness of walnuts,
20 increasing demand, and all else equal, enhancing
21 prices.

22 That program would require handlers to

1 label the product on its primary face label as
2 California walnuts, the handler's name, or with a
3 brand.

4 This requirement could aid in
5 differentiating California walnuts from walnuts
6 produced elsewhere, potentially leading to higher
7 prices for California producers for any given
8 levels of California and worldwide production.

9 There are multiple ways in which
10 handler-led investments in advertising and
11 promotion could increase demand. First, current
12 walnut consumers could purchase more walnuts.
13 Second, more consumers could choose to purchase
14 walnuts.

15 The California Walnut Board market
16 research has estimated that California walnuts
17 are consumed by 40 percent of U.S. households, so
18 there is substantial untapped potential demand.

19 Finally, handler-led investments could
20 result in additional sales channels due to the
21 development and sale of value-added products,
22 potentially increasing net returns above those

1 obtained by commodity sales.

2 New value-added products and greater
3 visibility of existing ones could induce current
4 walnut users to buy more and attract new users.

5 A quantitative estimate of these
6 benefits is obtained based on the analysis in
7 Kaiser 2018, which follows the standard economic
8 approach for estimating the economic impact of
9 commodity advertising and promotion expenditures.

10 Using data from 1980 to 2016, he
11 estimated the demand for California walnuts as a
12 function of the price of California walnuts,
13 United States gross domestic product, and
14 California Walnut Board advertising and promotion
15 expenditures.

16 He then estimated the own price supply
17 elasticity of California walnuts. This
18 elasticity estimates a change of walnuts supplied
19 in response to a change in the price of walnuts.

20 The estimated supply and demand
21 equations were used to construct a simulation
22 model that ensures the quantity supplied equals

1 the quantity demanded.

2 Based on this analysis, he estimated
3 the average total revenue and net return
4 generated by a one dollar investment in
5 advertising and promotion. Kaiser 2018 has been
6 included as Exhibit 21.

7 Kaiser 2018 estimated that each dollar
8 invested in advertising and promotion of
9 California walnuts generated \$19.75 in total
10 revenue and \$15.67 in net returns on average.

11 Assuming a four cent assessment per
12 hundredweight and total production of 625 million
13 hundredweight, then the California Walnut Board's
14 total annual budget is about \$25 million.

15 If the program budget would be
16 assigned 10 percent of assessments, then it would
17 have \$2.5 million to allocate each year.

18 Assuming all handlers requested their
19 maximum amount of credit-back, then they would
20 invest a total of \$3.25 million in advertising
21 and promotion.

22 Seventy percent of these expenditures

1 would be credited back, totaling the \$2.5 million
2 in the program budget. The remaining 30 percent
3 would be a \$1.07 million increase in total
4 advertising and promotion expenditures, paid by
5 handlers.

6 Multiplying Kaiser's estimated returns
7 per dollar by the additional expenditures by
8 handlers, the program would generate roughly
9 \$21.2 million in additional total revenues and
10 roughly \$16.8 million in additional net returns
11 for California walnut producers and handlers.

12 Table one on the page of my testimony summarizes
13 those numbers.

14 So, the effects on costs, there are no
15 expected cost increases in the short run,
16 although over time, administrative costs may
17 increase for the California Walnut Board
18 depending on the evolution of the size and
19 complexity of the program.

20 Costs will decrease for participating
21 handlers. Producers, producers' costs would be
22 unaffected. The program only involves actions by

1 handlers and the California Walnut Board.

2 For handlers, handlers participating
3 in the credit-back program will have a decrease
4 in net assessment costs because a portion of
5 their marketing expenses will be credited back.

6 Costs will be unchanged for handlers
7 who do not participate. All handlers choose
8 whether or not to participate. They will only do
9 so if there is a positive net benefit.

10 Handlers do not compete for credit-
11 back funds. The amount of funds available to the
12 handler is dependent on its share of total
13 acquisitions in the previous year.

14 The California Walnut Board,
15 initially, oversight expenses for the California
16 Walnut Board are expected to remain unchanged
17 because it is anticipated that the program will
18 be funded from the current operational budget.

19 However, depending on the scope and
20 complexity of the program once implemented,
21 additional staff resources may be needed. USDA,
22 there are no expected increases in costs for

1 USDA.

2 Effects on small businesses, USDA data
3 indicates the majority of walnut growers and
4 walnut handlers qualify as small business
5 entities according to the Small Business
6 Administration definitions.

7 Given that the majority of industry
8 businesses qualify as small entities, the
9 benefits and costs explained above are the
10 anticipated effects on small businesses.

11 Benefits to small business are
12 proportional. All industry members will benefit
13 proportionally from an increase in demand due to
14 the credit-back program.

15 Growers meeting the small business
16 definition, costs are zero for growers, including
17 small growers. Benefits to small business
18 growers are proportional. All industry members
19 will benefit proportionally from an increase in
20 demand due to the credit-back program.

21 Handlers meeting the small business
22 definition, small businesses, as for all

1 handlers, will participate only if they benefit
2 from doing so. Handlers meeting the definition
3 of a small business will benefit proportionately
4 from the reduction in costs obtained by
5 participating in the credit-back program.

6 Because a handler's maximum credit-
7 back is pro rata based on his percent of
8 acquisitions from the prior year, no handler can
9 benefit disproportionately from the program.

10 Benefits to small business handlers
11 are proportional. All industry members would
12 benefit proportionately from an increase in
13 demand due to the credit-back program. Thank
14 you, Your Honor.

15 JUDGE STROTHER: I don't know if I'm
16 muted or not. Now I'm not muted, folks. Thank
17 you, and I apologize before, Dr. Goodhue, not Ms.

18 Okay, as we usually do, USDA is up.
19 We've already identified the exhibits, so USDA is
20 up for questions for this witness first. Anyone
21 from USDA?

22 MS. SCHMAEDICK: Yes, Your Honor.

1 This is Melissa Schmaedick calling.

2 JUDGE STROTHER: Your witness, Ms.
3 Schmaedick.

4 MS. SCHMAEDICK: Thank you for your
5 testimony. Can you hear me well enough?

6 DR. GOODHUE: Yes, I think so.

7 BY MS. SCHMAEDICK:

8 Q Okay, thanks. When you were going
9 through your testimony, there was one statement
10 that struck me as very interesting and it's at
11 the bottom of page three. You state, all
12 handlers choose whether or not to participate.
13 They will only do so if there is a positive net
14 benefit. Could you expand on that a little bit
15 for me?

16 A Sure, I'd be happy to. So, basically
17 if a handler makes a calculation that it won't
18 increase their net returns and won't increase
19 their profits by taking advantage of the credit-
20 back program to get part of their approved,
21 sorry, eligible expenses paid, then they simply
22 won't participate.

1 So, for example, if hypothetically,
2 they didn't want to do any advertising, then they
3 would not want to participate in the credit-back
4 program and they'd have no eligible expenditures.
5 So, it's a question of do they think that it will
6 be profitable.

7 Q I see. So, essentially does that mean
8 that if a handler just decides not to
9 participate, is there any negative impact on him,
10 any reason why that would be, you know, a burden,
11 or a cost, or --

12 A No, there would be no cost to it, and
13 there would -- yeah, there would certainly be no
14 cost to not participating.

15 Q Is there any -- I guess I'm just
16 trying to -- my assumption is that, based on what
17 you're saying, is that if this program were
18 implemented, there really aren't any negatives
19 based on your analysis. There is only a status
20 quo or a potential benefit. Is that a correct
21 summary of what you're saying?

22 A That is correct.

1 Q Okay, what about impacts on consumers?
2 Do you think there are any positive or negative
3 impacts on consumers?

4 A Yes, so when I discuss consumer
5 surplus, that is the benefit that consumers get
6 from purchasing and consuming walnuts, and if
7 advertising and promotion increases, for example,
8 awareness of the health benefits of eating
9 walnuts, then consumers would benefit in terms of
10 integrating the product into a healthy diet.

11 Q Could another potential benefit be
12 product diversification? Maybe new products are
13 developed that maybe meet a consumer demand that
14 is yet to be filled?

15 A Yes, definitely. A new product, you
16 know, and we've had people reference already the
17 movement toward snacking as being a growth
18 category, and so creating new snacks based on
19 walnuts could certainly benefit consumers by
20 providing them with a broader variety of snacking
21 products.

22 Q To your knowledge, are there any niche

1 markets that could be taken advantage of through
2 product development other than the snacking
3 market?

4 A So, certainly there's been -- there
5 are products that have been developed that could
6 be used as meat substitutes potentially. There's
7 walnut milk. I am not a product developer and
8 I'm not a nutritionist, so that's the extent of
9 my knowledge as to specific products.

10 Q Thank you. I agree. I guess I am
11 asking more along the lines of looking at a long-
12 term impact and growth of demand in the market,
13 and looking at the potential for this program to
14 support product innovation which then leads to
15 filling some of those niche markets, but then I'm
16 assuming, based on what you're indicating here,
17 may project into a longer-term growth and a
18 permanent growth in demand for consumers. Do you
19 think that is a potential outcome?

20 A Yes, I do.

21 Q Okay, thank you. This is a completely
22 different question, but how long have you been a

1 member of the Board?

2 A Since 2015, or, I'm sorry, I was an
3 alternate starting in 2015.

4 Q Okay.

5 A And I'm the public member.

6 MS. SCHMAEDICK: Okay, thank you. No
7 further questions at this time. Thank you.

8 JUDGE STROTHER: Anyone else from USDA
9 have any questions for Dr. Goodhue?

10 DR. HINMAN: Your Honor, Don Hinman.

11 JUDGE STROTHER: Your witness, Mr.
12 Hinman.

13 DR. HINMAN: Thank you.

14 BY DR. HINMAN:

15 Q Dr. Goodhue, thank you for your
16 testimony. I wanted to turn to page three of
17 your exhibit there, your testimony. Then the
18 bottom -- are you on page three?

19 A I am. The format of yours looks
20 slightly different from mine, so.

21 Q Oh, okay.

22 A But I can see it on screen. It's

1 projected here.

2 Q Yes, it's the -- at the bottom of that
3 second full, the first complete paragraph, but
4 the second paragraph on the screen there. You
5 mention total revenue and net revenue from the
6 Kaiser study, right?

7 A Yes.

8 Q I just wondered if you could elaborate
9 on why is this reported in two ways like that?
10 What is the significance of reporting both as
11 total revenue and net return for a given, in this
12 case, promotional expenditure?

13 A So, the importance of reporting total
14 revenue is that's the price times the quantity
15 effect, the total revenues coming into the
16 industry. From a practical point of view, that's
17 what USDA, for example, reports, and so then, you
18 know, that's a measure we can see, and then net
19 revenue is important because that's the return
20 that, after they pay their costs, net returns is
21 what goes to the industry, to producers.

22 So, you could have an increase in

1 total revenue that was so expensive, it would
2 actually reduce net returns, and so you need to
3 report both of them. And in Professor Kaiser's
4 study, he found that both would be impacted, were
5 impacted positively by the Walnut Board's
6 advertising promotion.

7 Q And net return and producer surplus,
8 what is the relationship?

9 A So, the difference between net return
10 and producer surplus is fixed cost. So, producer
11 surplus, which you see in the figures, the three
12 figures I had --

13 Q Right.

14 A -- that's the above variable cost --
15 (Simultaneous speaking.)

16 Q Okay.

17 A And then fixed cost means turn that
18 into profits.

19 Q Okay, thank you. In the next
20 paragraph, you have your example computation on
21 the last page there and you used a program budget
22 for credit-back of 10 percent of the total Walnut

1 Board budget, is that correct?

2 A Correct.

3 Q And in the 10 percent, was that a
4 likely initial range? Was there -- did you think
5 about higher or lower ones? What would be a
6 possible range that maybe the Board might
7 consider or was 10 percent like an average likely
8 place to start?

9 A So, I would refer that question to Ms.
10 Connelly. This was a reasonable illustration. I
11 don't have precise knowledge of where it would be
12 implemented at --

13 Q Okay.

14 A -- to the level, so.

15 Q Okay, thank you. In the middle of
16 that paragraph, you talk about they would invest
17 a total of \$3.25 million. Do you see that?

18 A Yes.

19 Q Is that meant to be the same as on
20 your example, \$3.571 million as the line there,
21 line G in your table? Should that be \$3.571
22 million?

1 A Yes, it should be.

2 Q Yes?

3 A Yes, yes.

4 Q So that number should be 3.571, okay,
5 thank you. Going down to the effects on costs,
6 and the first paragraph under there, the last
7 sentence is, costs will decrease for
8 participating handlers, and then you go down
9 below that and you have, handlers participating
10 in the credit-back program will have a decrease
11 in net assessment. Are those exactly the same
12 concept or is there more to it than that?

13 A That's exactly the same concept.

14 DR. HINMAN: Okay. Okay, thank you.
15 No further questions, Dr. Goodhue. Thank you,
16 Your Honor.

17 JUDGE STROTHER: Any questions from
18 anyone else at USDA for Dr. Goodhue?

19 MS. CHILUKURI: Yes, Your Honor. I
20 had a question for Dr. Goodhue. Rupa Chilukuri,
21 USDA.

22 JUDGE STROTHER: Yes.

1 BY MS. CHILUKURI:

2 Q Dr. Goodhue, you said you were a
3 public member on the Board. Have you
4 participated in any committees? Are you a member
5 of any committees on the Board?

6 A I am. I'm a member of the diversity
7 committee and the MORC committee, marketing and
8 order revision committee.

9 Q In terms of your work on the MORC, can
10 you talk -- have you participated in outreach
11 efforts? Can you talk about engaging stakeholder
12 input on the proposed changes?

13 A I'm getting an echo. Could you repeat
14 the question, please?

15 Q Sure, let me try again. So, I was
16 just asking in terms of your work on the MORC,
17 have you -- can you talk about the outreach
18 efforts that the MORC has engaged in?

19 A I have not engaged myself in outreach
20 efforts. I have not spoken at the UC field days
21 or anything like that. I personally have not.

22 Q Okay, in other work associated with

1 the program, have you had handlers or growers
2 approach you and talk about their thoughts on
3 proposed amendments?

4 A Only in a limited sense. For example,
5 at the Board meetings, people have spoken with
6 me.

7 Q Okay.

8 A They were supportive.

9 MS. CHILUKURI: Great, thank you very
10 much. I have no further questions.

11 JUDGE STROTHER: Okay, any further
12 questions from USDA personnel?

13 MS. MCGOWAN: This is Tracy McGowan,
14 Your Honor. I'd like to just ask a couple of
15 questions. M-C-G-O-W-A-N.

16 JUDGE STROTHER: Your witness, Ms.
17 McGowan.

18 MS. MCGOWAN: Thank you.

19 BY MS. MCGOWAN:

20 Q Thank you for your testimony, Dr.
21 Goodhue. I wanted to ask, on the Kaiser study, I
22 see on page one which is up now on screen, that

1 was done in 2005, is that right?

2 A No, Ms. McGowan. So, there are two
3 things. There's what's going to be Exhibit 21.
4 That's a report that Professor Kaiser prepared
5 for the Walnut Board.

6 This is a book he co-edited that I
7 cited because it's a classic that has several
8 studies of the returns to advertising and
9 promotion for different commodities.

10 Q Okay.

11 A So, this is a classic reference.

12 Q Thank you for clarifying that. And
13 then also on page three, if you could scroll down
14 to that again? Yeah, perfect. The second full
15 paragraph, the same paragraph we were discussing
16 before -- oh, I see, the Kaiser 2018. Thanks, I
17 see it now.

18 The estimate that you just discussed
19 with Mr. Hinman about, that there was \$19.75 for
20 each dollar invested in total revenues and \$15.67
21 in net returns on average per dollar invested, is
22 there an upward limit on that? How far does that

1 carry out?

2 Pardon, I'm not an economist, but is
3 there -- at some point, does that average return
4 change and cannot, is that part of the study?

5 A So, he used linear regressions, and so
6 this is a linear coefficient, so it's a constant.
7 His study did not allow for these slopes to
8 change. So, it's like in my figures, there were
9 straight lines. Technically, those lines don't
10 have to be straight.

11 So, it certainly could be the case
12 that returns would decrease or maybe they could
13 increase. A decrease would be more likely to be
14 what one could predict, but you could also just
15 see that you could be capturing economies of
16 scale over some range.

17 MS. MCGOWAN: Okay, that's it for me.
18 I have no other further questions. Thank you.

19 JUDGE STROTHER: Anyone further from
20 USDA? Okay, turning to industry proponents,
21 questions? Does anyone have any examination for
22 Dr. Goodhue from the industry?

1 MS. CONNELLY: Yes, Judge, Michelle
2 Connelly.

3 BY MS. CONNELLY:

4 Q Ms. Goodhue, you said you participated
5 in the MORC committee meetings. In doing so, do
6 you recall that there may have been discussion
7 about what types of ranges of assessments were
8 used by other groups such as Almonds and Prunes?

9 A I do not, Ms. Connelly, but I did miss
10 that meeting when I was in Australia in August.
11 Perhaps it was discussed then.

12 MS. CONNELLY: Thank you, Ms. Goodhue.
13 Anyone on the phone on our end? Nothing further
14 on this end, Judge.

15 MS. VAWTER: We have another question
16 on the phone from John MacTavish.

17 JUDGE STROTHER: Mr. MacTavish, your
18 witness.

19 MS. VAWTER: Can you please unmute,
20 Pushpinder?

21 COURT REPORTER: I'm sorry, who is
22 speaking?

1 MS. VAWTER: Terry Vawter, USDA.

2 COURT REPORTER: Thank you.

3 JUDGE STROTHER: We need to unmute Mr.
4 Kumar, as I understand.

5 MR. HATCH: He is now.

6 JUDGE STROTHER: Very good. Mr.
7 Kumar, welcome back.

8 MR. KUMAR: Yes, Your Honor. I have
9 a question from John MacTavish. Can I proceed?

10 JUDGE STROTHER: Yes, you may.

11 MR. KUMAR: Thank you.

12 BY MR. KUMAR:

13 Q His question is, just caught the last
14 part of UC professor's presentation where she
15 stated that growers would see no increase in cost
16 for this program. Since the handlers already
17 pass on the full cost of the assessment to
18 growers, how can she be certain that the handler
19 will not pass on these new marketing expenses by
20 reducing the payout to the growers?

21 A Could you re-read that, please?

22 Q Sure, his question starts like this,

1 just caught the last part of UC professor's
2 presentation where she stated that growers would
3 see no increase in cost for this program. Since
4 the handlers already pass on the full cost of the
5 assessment to growers, how can she be certain
6 that the handler will not pass on these new
7 marketing expenses by reducing the payout to
8 growers?

9 JUDGE STROTHER: I'm going to ask a
10 foundational question to help that cross along.
11 Dr. Goodhue, do you know if the handlers pass on
12 the total cost of the assessment at this point?

13 DR. GOODHUE: No, Your Honor, I do
14 not. I believe that it depends on arrangements
15 between the handlers and the growers.

16 JUDGE STROTHER: Let's try it this way
17 then. Let's assume you had a handler and a
18 grower, and the grower passed on the entire cost
19 of the assessment to the grower. Would your
20 testimony state that this program would not
21 increase the cost to that grower?

22 DR. GOODHUE: That is correct if the

1 assessment is already being paid by the grower.
2 This program does not change the assessment as
3 such. This is a credit-back arrangement, but it
4 doesn't change the assessment, which is what the
5 grower is paying.

6 JUDGE STROTHER: I'm going to give Mr.
7 MacTavish the chance to text in any follow-ups.

8 MR. KUMAR: Yes, Your Honor. I'm
9 checking. Yes, Your Honor. There's another
10 question.

11 JUDGE STROTHER: Proceed.

12 BY MR. KUMAR:

13 Q Producers' costs would not be
14 affected. Please explain.

15 A Producers' costs would not be affected
16 because they are not the ones making the
17 promotion and advertising decisions. It's only
18 handlers are participating directly in the
19 program. It won't change producers' costs to
20 production.

21 MR. KUMAR: Another question, Your
22 Honor.

1 JUDGE STROTHER: Please.

2 BY MR. KUMAR:

3 Q How can you be certain that costs will
4 not be passed on?

5 JUDGE STROTHER: No, I'm not going to
6 allow that question. She didn't say costs would
7 not be passed on. She said that the costs of the
8 assessment was sometimes passed on and sometimes
9 wasn't as far as she knew. If there's a
10 definition of what costs we're talking about that
11 would be passed on, I'm going to allow the
12 question.

13 MR. KUMAR: Now Mr. John is asking
14 marketing costs.

15 So, he's saying how can you be certain
16 that costs will not be passed on, the marketing
17 costs?

18 JUDGE STROTHER: Do you understand the
19 question, Dr. Goodhue?

20 DR. GOODHUE: I do, Your Honor. I'm
21 thinking about how to address it.

22 So, the question is, assuming that

1 there is not a competitive market for purchasing
2 walnuts between growers and handlers because to
3 the extent the market is competitive, that will
4 reduce the ability or prevent a handler from
5 being able to pass on costs because by passing on
6 costs, they're reducing the price, the net
7 revenue the grower gets, and the grower will
8 simply look for another handler for their crop.

9 JUDGE STROTHER: Are you opining as to
10 whether the market for California walnuts sold to
11 processors is competitive?

12 DR. GOODHUE: No, Your Honor. That's
13 not what I meant to do. I was trying to explain
14 that the question itself is making presumptions
15 about the structure of the market, and so I was
16 trying to explain it without making the
17 presumption about the nature of the California
18 market.

19 I guess I could reframe it in terms of
20 economic theory and call it industry X, but the
21 point is I have no information that would allow
22 me to determine the competitiveness. I'm just

1 saying that the answer to this question starts
2 from a presumption about the market.

3 MS. VAWTER: This is Terry Vawter. I
4 have a question maybe to clarify that.

5 JUDGE STROTHER: Yes, Ms. Vawter.

6 BY MS. VAWTER:

7 Q Dr. Goodhue, what you're basically --
8 if I understand you correctly, are you basically
9 saying that even if a handler chose to pass those
10 marketing costs onto his growers, very soon he
11 would have fewer growers to be providing product
12 to him?

13 A Yes, that's exactly right. That's
14 exactly right. Thank you for that clear summary.

15 MR. KUMAR: Another question, Your
16 Honor.

17 JUDGE STROTHER: Go ahead.

18 MR. KUMAR: "All costs of processing
19 are a direct expense to the grower," and that's
20 all he said.

21 JUDGE STROTHER: That's not a
22 question. Strike that.

1 DR. GOODHUE: Thank you, Your Honor.

2 JUDGE STROTHER: Ms. Connelly, your
3 square, this is like Hollywood Squares. This is
4 fun. Your square was lit up briefly. Does
5 California Walnuts have something to say?

6 MS. CONNELLY: No, Your Honor. It's
7 just very sensitive and picking up a lot of
8 noise.

9 JUDGE STROTHER: For what it's worth,
10 things are very clear to me. Okay, is that it,
11 Mr. Kumar?

12 MR. KUMAR: That's it, Your Honor. I
13 don't have any other questions from -- Your
14 Honor, I'm still checking, but so far, nothing.

15 JUDGE STROTHER: I take it nobody else
16 has texted anything in, or chatted, or anything
17 else? Hearing none, back to USDA. Any follow
18 up?

19 MR. KUMAR: Your Honor, he's asking
20 another question.

21 JUDGE STROTHER: Okay.

22 BY MR. KUMAR:

1 Q He said since no one knows what a
2 handler charges, how can this claim be made?

3 JUDGE STROTHER: I don't understand
4 the question and I don't think Dr. Goodhue is
5 going to understand the question. Dr. Goodhue,
6 do you know how much handlers charge?

7 DR. GOODHUE: Handlers --

8 (Simultaneous speaking.)

9 JUDGE STROTHER: Please, go ahead.

10 DR. GOODHUE: So, handlers charge. I
11 don't know who is being charged what, so I can't
12 answer the question.

13 JUDGE STROTHER: That's an answer to
14 the question.

15 DR. GOODHUE: Okay.

16 JUDGE STROTHER: You don't know what
17 portion -- you don't know how the charges for
18 these marketing fees are charged or whether
19 they're charged back to the growers, is that
20 correct?

21 DR. GOODHUE: That is correct.

22 MS. HOAGLAND: There is an objection

1 from California Walnut Board made via chat. They
2 may need to be unmuted.

3 JUDGE STROTHER: Okay, unmute the --
4 well, my California Walnut Board is not muted,
5 but --

6 MS. CONNELLY: Thank you, Judge.

7 JUDGE STROTHER: -- somebody from the
8 California Walnut Board wants to make an
9 objection.

10 MS. CONNELLY: Thank you, Judge. Yes,
11 the terms of a sale between a handler and a
12 grower are a term of sale. That's not anything
13 that the Board has any authority over, and
14 therefore, it doesn't seem to be relevant to what
15 we're trying to discuss here.

16 JUDGE STROTHER: Well, I'll bear that
17 in mind. I think the witness did testify that
18 she didn't know those terms or that those terms
19 were not a basis for her testimony. Do I have
20 that right, Dr. Goodhue?

21 DR. GOODHUE: Yes, Your Honor.

22 JUDGE STROTHER: Object again when

1 there's a pending question and we'll try to get
2 to you faster.

3 MR. KUMAR: There's another text, Your
4 Honor. It says that it is a claim in the
5 presentation. That's what he said.

6 JUDGE STROTHER: I don't know what
7 "it" is. I don't think the witness -- do you
8 know what "it" is in that sentence, Dr. Goodhue?

9 DR. GOODHUE: No, Your Honor.

10 JUDGE STROTHER: The question is
11 rejected. Okay, anything further from USDA? I
12 think I asked that before. Anything further from
13 industry proponents? Hearing none, anything
14 further from anyone else?

15 Hearing none, we had two exhibits
16 identified. Exhibit 20 was Dr. Goodhue's
17 statement. Exhibit 21 was Dr. Goodhue's
18 testimony exhibit Kaiser economic analysis. Any
19 objection to the entry of either of those into
20 the record?

21 Hearing none, Exhibits 20 and 21 are
22 made part of the record.

1 (Whereupon, the above-referred to
2 documents were received into evidence as Exhibits
3 20 and 21.)

4 JUDGE STROTHER: Dr. Goodhue, thank
5 you for your testimony. You may step down from
6 the virtual witness box. Next witness, Mr. Bill
7 Tos, another California Walnut Board.

8 MR. TOS: I'm here, Your Honor. Can
9 you hear me?

10 JUDGE STROTHER: I can. Please raise
11 your right hand. Mr. Tos, do you swear or affirm
12 that the testimony you're about to give today is
13 the truth and nothing but the truth under penalty
14 of perjury?

15 MR. TOS: I do.

16 JUDGE STROTHER: And Exhibit 22, as I
17 have described it, is your witness statement,
18 which is now posted on the screen.

19 (Whereupon, the above-referred to
20 document was marked as Exhibit No. 22 for
21 identification.)

22 JUDGE STROTHER: Is that correct?

1 MR. TOS: Yes, that's correct.

2 JUDGE STROTHER: Okay, Mr. Tos, you
3 may proceed with your statement.

4 MR. TOS: All right, thank you very
5 much, Your Honor. My name is William Tos, Jr.,
6 and that's spelled W-I-L-L-I-A-M T-O-S J-R. I
7 usually go by Bill.

8 I'm a third generation large Southern
9 California family farmer, co-owner of Tos Farms
10 and of Tos Land Company in Hanford, California in
11 Kings County, and we grow walnuts, almonds, table
12 grapes, and fresh fruit.

13 I serve on the California Walnut Board
14 in the capacity of an alternate, and I also serve
15 on the Walnut Commission as a member. Currently
16 on the Walnut Marketing Board Committees, I sit
17 on the Production Research, Marketing Order
18 Revision, and the Executive Committee.

19 Today I would like to address
20 justification points, one, the proposal purpose,
21 two, problems to be addressed, and three, current
22 requirements/industry practices relative to the

1 proposal.

2 Proposal 1b adds in a new subpart D,
3 research and development requirements, and a new
4 Section 984.546, credit for market promotion
5 activities, including paid advertising.

6 The language of the amendment 946.46
7 published in the Notice of Hearing in the Federal
8 Register. Note this puts the language on the
9 record -- oh, I don't have to read it all.

10 The proposed amendment would include
11 adding authority under Section 984.46, research
12 and promotion, for a, quote, "credit-back" of
13 market promotion activities against handler
14 assessments, and also adding a new Section
15 984.546, credit for market promotion activities,
16 including paid advertising, under a new Subpart
17 D, research and development requirements,
18 outlining the functional requirements of the
19 credit-back program.

20 The proposal amends federal marketing
21 order 984 by adding authority to provide credit
22 for market promotion expenses paid by handlers

1 against their annual assessments due under the
2 program.

3 If implemented, this program would
4 encourage handlers to undertake market promotion
5 activities in addition to the California Walnut
6 Board's generic marketing efforts. Currently,
7 this authority is not granted in the order
8 language, and that completes my testimony.

9 JUDGE STROTHER: Any examination,
10 USDA? Going once.

11 MS. SCHMAEDICK: Melissa Schmaedick,
12 USDA.

13 BY MS. SCHMAEDICK:

14 Q Thank you, Mr. Tos, and good afternoon
15 to you. You mentioned that you were a member of
16 a commission. Can you clarify which commission
17 that is?

18 A The California Walnut Commission.

19 Q Okay, and is that a state program?

20 A That's a state program and that is
21 separate from the California Walnut Board.

22 Q Okay, thank you. And you also

1 mentioned that you grow almonds, is that correct?

2 A That is correct.

3 Q I'm wondering if you have experience
4 with the credit-back program that exists under
5 the almond program. There have been several
6 references to a similar credit-back authority
7 under that program, and I'm just wondering if you
8 could speak to your experience with that?

9 A Yeah, my experience would only be, you
10 know, from a grower's perspective and seeing the
11 results of new products in the stores and
12 advertising that I've seen.

13 And the almond industry seems to have
14 done a good job in promoting new products into
15 the marketplace over the years, and I'm sure that
16 their assessment program, credit-back program
17 helped different handlers develop those products
18 and bring them to market.

19 It's just so expensive to do that,
20 that any kind of help like this, I think,
21 encourages that behavior, so that's what we're
22 hoping for here.

1 Q In the almond industry, are you also
2 a large grower or are you a small grower?

3 A So we're considered a large grower.

4 Q And when I asked about your experience
5 under the program, I more specifically wanted to
6 know, I mean, your personal experience, but also
7 if you can speak to your general knowledge or
8 opinion of how things work in the almond
9 industry. There seems to be concern over the
10 impact of a credit-back mechanism on growers and
11 specifically --

12 (Simultaneous speaking.)

13 A I'm just looking from a general
14 demand, you know, supply situation, and just
15 increasing demand for their product or for the
16 almond product, and one of the ways you do that
17 with a higher return is to get value-added
18 products into the market and into the chain, and
19 I just think from what I've observed, the almond
20 industry has been able to do that.

21 Q Your expenses charged by your handler
22 in the almond industry, has that changed any as a

1 result of the credit-back program?

2 A I'm having a hard time understanding
3 you. Could you repeat the question?

4 Q Sure, absolutely. So, based on what
5 I've learned today from other witness testimony,
6 I'm assuming you have a relationship between you
7 as a grower and the handler that you sell your
8 product to, and further, that there is some sort
9 of deduction that may be interpreted as a pass-
10 off of the assessment to the grower.

11 So, based on that premise, my question
12 is have you seen an increase in your payments to
13 almond handlers as a result of the credit-back
14 program that exists in the almond industry?

15 A Yes, I think so. I think over the
16 last several years, we have seen a narrowing of
17 the price between non-pareil variety and other
18 varieties of lesser notoriety or demand, and
19 those varieties have historically been paid less
20 compared to a non-pareil. That price gap is now
21 closing.

22 The lower-valued product is now

1 catching up with the non-pareil, and the reason
2 for that is the usage of these lesser varieties
3 and more of a confectional baking and candy type
4 of products, and those nuts are being used in the
5 new added commodities or value-added products,
6 and so I think there's a link there of bringing
7 up the value of those formerly lesser priced
8 products, so that's adding to my bottom line.

9 Q Thank you for that testimony. I
10 appreciate the information, but my question was
11 specific to the costs charged to you, the
12 deductions made.

13 A Oh, I see. No, the cost to us stays
14 the same. We're assessed a certain amount and
15 that's a static constant amount, so, no, there is
16 no increased cost.

17 Q Would you anticipate the same types of
18 results if a credit-back program were implemented
19 for walnuts?

20 A Yes, I believe so. I think it has
21 that potential. I think the cost structure that
22 you were just talking about is a static number

1 that is, we are all told what it is, and on the
2 growers' statements that come from the handlers
3 when they pay us, the rate is put right on the
4 payment voucher.

5 So, we all know what we're being
6 charged, you know, the assessments, and that
7 number is static year after year or whatever is
8 set by the Walnut Marketing Board.

9 Q So, if your handler were to take
10 advantage of this credit-back program and spend
11 the money on some sort of promotional activity,
12 would you anticipate your deduction changing?
13 Would it increase or would it stay the same?

14 A Would our return increase?

15 Q No, no, what the handler is charging,
16 would that increase?

17 A Oh, he should be -- the assessment
18 rate and what the handler is charging should stay
19 the same.

20 Q Okay, thank you. You mentioned that
21 you were part of the committee, the marketing
22 order and revision committee. Were you actively

1 involved in those discussions?

2 A Yes, I was, and I thought the
3 discussion was, again, very inclusive and robust.
4 I think maybe I talked too much. I don't know,
5 but anyhow, I thought there was a robust
6 discussion by everyone involved.

7 Q Thank you. Now, you mentioned in your
8 testimony that you were going to address the
9 problem that this particular recommendation was
10 supposed to address. In your perspective as a
11 grower, what is the problem that we're trying to
12 address here?

13 A Well, the fundamental problem is we
14 have ever-increasing amounts of walnuts to be
15 sold at a profitable level, which is becoming
16 more and more of a challenge as what's been
17 discussed earlier from the different foreign
18 sources and those types of things.

19 So, we're faced with, you know, how
20 can we move, help move profitably this product
21 for all of the growers and handlers' benefit?

22 And we have tried a rather robust,

1 generic advertising program for the past three to
2 four years, and we've moved the needle, but not
3 very much, and so in the face of ever-increasing
4 supply, we are faced with the challenge of how
5 can we do it better?

6 And so what we're proposing is to take
7 some of the generic advertising dollars, 15
8 percent, and move that over to a credit-back
9 program to see if branded advertising by handlers
10 may indeed produce more demand and more off-take
11 versus generic, but we still feel that generic
12 has a place and a role, so this is a beginning
13 start to trying that theory.

14 Q Thank you. Now, you just mentioned
15 that the industry had tried a robust, generic
16 promotion effort for, I believe you said for a
17 couple of years, is that correct?

18 A That's correct, yes. I think it's
19 three or four years. I can't remember which one.

20 Q So, I believe you're the first witness
21 to have mentioned this and I find it interesting.
22 Can you explain your thoughts on what that effort

1 attempted and maybe why it was not as successful
2 as you might have hoped?

3 A Well, I'm not a marketing expert, but
4 I think sometimes generic advertising doesn't
5 have quite the traction that branded has, and
6 even though we, by generic advertising, we raised
7 awareness, we did see some improvement. It just
8 seems like it should be more.

9 And looking at the almond industry for
10 instance, it seems like those branded products
11 seemed to get a little more traction maybe with
12 the consumer, and so we think both are beneficial
13 in moving products, so we're trying to go from no
14 branded advertising help to some and see the
15 results, see what it can do.

16 Q Thank you. Now, I wanted to ask
17 another question. In your testimony, you talk
18 about adding the authority for credit-back under
19 984.46. Then you talk about adding a new
20 section, 984.546. Can you tell me kind of what
21 the difference is between those two sections?

22 A Well, I don't have it in front of me,

1 but if I recall, it's about making the program
2 functional basically. It puts in the structure
3 in order to run a credit-back program.

4 Q And that would be under 546, is that
5 correct?

6 A Yes.

7 Q And the way that the marketing order
8 and revision committee structured the proposal,
9 does it allow for changes in the future if
10 perhaps something needs to be revised or refined?

11 A Yes, it does.

12 Q Can you speak to the process that it
13 might have to go through to make changes? For
14 example, is it something that the Board just can
15 do on their own or would that require, you know,
16 sort of an official publication and a comment
17 period on proposed changes?

18 A Well, I think it would start at our
19 domestic marketing committee level to be
20 evaluating how the program would be, how it would
21 be effective or not, and if any changes needed to
22 be considered, and then it would go back to the

1 MORC committee, and then it would probably go
2 onto the Board for approval, and then we would
3 hope to be able to make any changes through the
4 informal rule process if those changes needed to
5 be made.

6 Q Thank you. And by the informal
7 rulemaking process, I believe someone else has
8 also spoken about that term, does that refer to a
9 sort of notice in the Federal Register and a
10 public comment period before a decision is made?

11 A You know, most likely, but I'm going
12 to have to defer maybe to Michelle on the finer
13 points of that.

14 Q (telephonic interference) -- process
15 that we're doing today with the public hearing?

16 PARTICIPANT: We can't hear Melissa.
17 Melissa, can you speak up?

18 MS. SCHMAEDICK: Yes, my question was
19 if Mr. Tos' understanding of informal rulemaking,
20 is it that that process is different from what we
21 are doing today, which is formal rulemaking?

22 PARTICIPANT: Mr. Tos, did you hear

1 the question?

2 MR. TOS: Yeah, we're doing, my
3 understanding is we're doing formal rulemaking
4 today, and if we did any changes, modest changes
5 in the program, we could go through an informal
6 rule process. That's my understanding.

7 MS. SCHMAEDICK: Okay, thank you.
8 That concludes my questions.

9 JUDGE STROTHER: Okay, anyone else?
10 I forget where we are now. Anyone else with
11 USDA?

12 DR. HINMAN: Don Hinman, USDA.

13 JUDGE STROTHER: Okay, Mr. Hinman,
14 your witness.

15 DR. HINMAN: Just a single question.

16 BY DR. HINMAN:

17 Q Thank you, Mr. Tos. I appreciate you
18 being here. The question just relates to you
19 talked about your farming operation and the
20 combination of walnuts, almonds, grapes, and
21 fruit, and as a large grower.

22 I just want to be clear. You say

1 large farmer. You know, in terms of the \$1
2 million in walnut sales per year, just in terms
3 of walnut sales, are you a large grower in your
4 typical --

5 A Yes, we are.

6 DR. HINMAN: Okay, that's my only
7 question. Thank you.

8 MR. TOS: Okay.

9 JUDGE STROTHER: Anyone else from USDA
10 for this witness?

11 MS. CHILUKURI: Yes, Your Honor, Rupa
12 Chilukuri for USDA.

13 JUDGE STROTHER: Okay, Counsel.

14 BY MS. CHILUKURI:

15 Q Mr. Tos, I just have a clarification
16 question. I see that you refer to proposal 1b in
17 your testimony, and obviously in the Notice of
18 Hearing itself, there is no 1b, so I'm wondering
19 where that's coming from?

20 A I lost the last part of your full
21 question.

22 Q Sure, so there's a reference to

1 proposal 1b in your testimony and in your Exhibit
2 22. What is that referring to, proposal 1b,
3 because there is no proposal 1b as written out
4 like that in the Notice of Hearing?

5 A Okay, I do not have that in front of
6 me, so I am at a disadvantage here at the moment.

7 Q Did the Walnut Board or the MORC
8 itself send anything to USDA where they set out
9 what the proposal would be? Is that what it's
10 referring to or is there some other document
11 where that is referenced, if you know?

12 A I'm going to have to say at this point
13 I don't know.

14 MS. CHILUKURI: Okay, that's the only
15 question I had. I have no further questions,
16 Your Honor.

17 JUDGE STROTHER: Any questions from
18 any other USDA personnel? Okay, any questions
19 for this witness from industry proponents?

20 MS. CONNELLY: This is Michelle
21 Connelly. I do not have any. Anyone on the
22 phone?

1 JUDGE STROTHER: Okay, hearing none,
2 any questions from anyone participating in this
3 hearing via Zoom? Okay, any questions for this
4 witness from anyone participating in the hearing
5 via telephone? I'm hearing none.

6 By the way, I take it again there were
7 no objections other than the ones that we covered
8 while the witness was actually testifying. Is
9 that right, Mr. Hatch and Ms. Hoagland?

10 MS. HOAGLAND: That's correct.

11 JUDGE STROTHER: Okay, we have asked
12 the USDA for any follow up, I guess, and I don't
13 think you have any if I understand the response.

14 Okay, we have one exhibit identified
15 as Exhibit 22 which is Mr. Tos' CWB testimony.
16 Any objections to the admission of that exhibit
17 being received into evidence?

18 Hearing and seeing none, Exhibit 22 is
19 admitted into evidence.

20 (Whereupon, the above-referred to
21 document was received into evidence as Exhibit
22 No. 22.)

1 JUDGE STROTHER: Okay, it's been quite
2 a while. It's been about three hours since we
3 took our last break. Should we take a quick 10-
4 minute break or, well, what should we do? We
5 have, I guess, another two or three -- another
6 one and three-quarter hours scheduled for today.
7 Am I reading that right? I'm sorry, who is
8 speaking?

9 MS. CHILUKURI: We're scheduled until
10 8:00 p.m., Your Honor, Eastern Time, and 5:00
11 p.m. Pacific Time. This is Rupa Chilukuri, USDA.

12 JUDGE STROTHER: Yeah, it looks like
13 it's about 3:20, I guess, Pacific Time, so I
14 don't know that we can complete things today or
15 not. There was not a fairly slow newly proposed
16 post-hearing procedural schedule.

17 So, I propose, and I'm sure our court
18 reporter could use a break as well, why don't we
19 just take a 10-minute break and come back at 3:30
20 Pacific Time?

21 MS. CHILUKURI: Okay, very good.
22 Thank you.

1 JUDGE STROTHER: Off the record.

2 We're in recess.

3 (Whereupon, the above-entitled matter
4 went off the record at 6:20 p.m. and resumed at
5 6:20 p.m.)

6 JUDGE STROTHER: Back on the record.
7 Thank you for your testimony today, Mr. Tos. You
8 are off the virtual witness stand. Thank you
9 very much.

10 MR. TOS: Thank you, Your Honor.

11 JUDGE STROTHER: We're in recess, 10-
12 minute break.

13 (Whereupon, the above-entitled matter
14 went off the record at 6:20 p.m. and resumed at
15 6:30 p.m.)

16 JUDGE STROTHER: Okay. I call Bob
17 Driver to the stand.

18 Mr. Driver, raise your right hand,
19 please.

20 WHEREUPON,

21 ROBERT DRIVER

22 was called for examination, and having been first

1 duly sworn, was examined and testified as
2 follows:

3 JUDGE STROTHER: Okay. I have one --
4 I'm sorry, yes, I have one exhibit for
5 identification I'll call Exhibit 23, which is Mr.
6 Driver's California Walnut Board testimony.

7 (Whereupon, the above-
8 referred to document was
9 marked as Exhibit No. 23 for
10 identification.)

11 Mr. Driver, you may make your
12 statement.

13 THE WITNESS: All right. Good
14 afternoon. My name is --

15 JUDGE STROTHER: Good afternoon.
16 Sorry.

17 THE WITNESS: My name is Robert Driver,
18 spelled R-O-B-E-R-T D-R-I-V-E-R.

19 Today I would like to speak in favor
20 of the credit-back authority proposal. My
21 comments will address justification points 4, 5,
22 and 6 of the proposal.

1 Family history -- I'm a fourth
2 generation walnut farmer. The Driver and Cover
3 families have been growing walnuts since 1900 in
4 both Southern and Northern California locations.
5 For the past 70 years we have farmed in
6 Stanislaus County. And during that --

7 JUDGE STROTHER: I'm so sorry to
8 interrupt you, sir, but could somebody who's also
9 speaking mute their microphone, please. There's
10 some background noise.

11 THE WITNESS: For the past 70 years we
12 have farmed in Stanislaus County. And during
13 that time we have been both walnut growers and
14 walnut nurserymen. Currently we are classified
15 as small growers.

16 For the past 30 years I have served
17 the walnut industry on various boards,
18 committees, and working groups. I am currently
19 Chairman of the California Walnut Commission, a
20 member of the California Walnut Board, and
21 California Walnut Commission Joint Marketing
22 Committee, and Vice Chairman of the California

1 Walnut Board Production Research Committee.

2 First I would like to briefly reflect
3 upon the success of the Walnut Board and the
4 Walnut Commission.

5 Before and during the Great
6 Depression, the California walnut industry
7 languished with grower prices trending lower each
8 year for about 20 years. Even though walnut
9 prices began to rebound during World War II,
10 prices began to fall back again after the war.

11 By 1948, walnut growers and handlers
12 decided that the only way to improve walnut
13 prices was to pool their efforts and grow the
14 walnut market. Those actions resulted in the
15 establishment of the USDA marketing order which
16 began to grow the walnut business through
17 production research and marketing promotion.
18 These activities are funded by a mandatory
19 assessment on walnut handlers.

20 Then, in 1987, the California Walnut
21 Commission was established, and it is funded by
22 mandatory assessments on growers. The Commission

1 is an agency of the State of California that
2 works in concurrence with the Secretary of the
3 California Department of Food and Agriculture.

4 The CWC is mainly involved in health
5 research and export market development
6 activities. Together, these two organizations
7 represent the interests of nearly 100 handlers
8 and 4,800 growers spread across California's
9 Central Valley.

10 The walnut industry generates a little
11 over \$1.8 billion in farm gate revenue and
12 supports some 85,000 jobs directly and
13 indirectly.

14 The California Walnut Board is only
15 authorized to conduct generic marketing activity
16 for the promotion of in-shell and shelled walnuts
17 under that program. The California Walnut Board
18 has previously developed new product formulations
19 for handler use. However, because the CWC does
20 not manufacture or otherwise sell, it is
21 incumbent upon handlers to further develop and
22 deliver new products to the marketplace.

1 A credit-back program would partially
2 offset handler assessments that are due under the
3 program and would incentivize handlers to support
4 such activities.

5 I support this proposal because it
6 provides an incentive for my handlers to invest
7 marketing dollars beneficially for the entire
8 walnut industry.

9 From my historical vantage point I
10 have observed that the richest and most stable
11 marketplace is right here in the United States of
12 America. Unfortunately, it has also been the
13 place of least walnut marketing investment. With
14 just 4.25 percent of the world population, we
15 hold 20 percent of the world's wealth. We have
16 no trade barriers nor tariffs. We have a unified
17 monetary system, and the best transportation
18 network in the world. Yet, 66 percent of walnut
19 income comes from the export market. That means
20 that we are overly dependent upon markets that
21 are here today and gone tomorrow.

22 As market conditions continue to

1 evolve, with increases in world production and
2 global trade issues, the need to increase
3 domestic demand is imminent. The intent of the
4 proposal is to encourage branded market promotion
5 in the domestic market while no markets are
6 excluded. The objective is to encourage more
7 activity domestically to grow consumption through
8 trade and consumer activities.

9 Finally, growth of export markets,
10 coupled with increased grower prices, is a
11 success story that has also fueled greater walnut
12 planting. Our reliance on the export engine has
13 also contributed to greater price volatility.

14 Eleven years ago, we had a short crop,
15 and for the first time walnut prices paid to
16 growers exceeded \$1.00 per pound. The following
17 year, we had a record crop, a financial crisis in
18 2008, and the walnut price cratered at \$0.64 per
19 pound.

20 If it were not for our export markets
21 and China's new entrance as a major buyer of
22 California walnuts at that time, we would have

1 had a marketing disaster. But prices continued
2 to advance for the next five years, reaching
3 \$1.86 per pound to the grower by 2013. But, as
4 China's new planting started coming into
5 production, world walnut prices began to retreat
6 again, but not to the levels that were seen in
7 2008.

8 And by 2017, Turkey and other Middle
9 Eastern countries were beginning to take up some
10 of the slack in world market demand. Walnut
11 prices then rebounded to \$1.25 per pound.

12 Then in 2018, the trade war hit.
13 Grower prices crashed to \$0.65 per pound. That
14 was the year when the straw broke the camel's
15 back. And during this wild ride, input costs
16 have not retreated. It is costing more to
17 profitably grow walnuts than it ever has.
18 Margins are thin at best. It's this kind of
19 price volatility that threatens our industry.

20 We are not traders. We do not thrive
21 on market uncertainty. We need our handlers to
22 be profitable so that we can be profitable. And

1 I view that we are all in this together. And I
2 believe that this proposal asserts that kind of -
3 - or supports that kind of cooperation.

4 That's the end of my testimony. I do
5 have some comments that, in questioning,
6 regarding a trip to China two years ago I could
7 answer. And it provides some perspective on some
8 of this pricing and world production.

9 That's the end of my testimony.

10 JUDGE STROTHER: Bob, you have the
11 floor. Are you suggesting that someone ask you
12 some questions about China? You can proceed
13 without having direct examination as far as I'm
14 concerned.

15 THE WITNESS: Yeah. I'm looking at the
16 USDA National Agricultural Statistics Service
17 2018 California Walnut Objective Measurement
18 Report, which was previously put up by Chuck
19 Crain. And it has to do with farm gate values.
20 And it really does illustrate where we came from
21 2018 -- I mean, sorry, 2008, which was the last
22 financial crisis.

1 Retail walnut prices increased for
2 every single year up until 2014. And that's when
3 China's massive planting began to come into
4 production. And it was 2015 crops where things
5 crashed again.

6 The Middle East gave us some relief.
7 And then the tariffs hit in 2018. I was in China
8 in June of 2018. And when I learned that the
9 Chinese growers were at breakeven, at best, at
10 \$0.85 a pound, I knew that we were in for a tough
11 ride in years ahead.

12 They had been planting -- get this --
13 they had been planting at a rate of 34 percent --
14 they were increasing their acreage on average 34
15 percent a year. And our acreage has only been
16 increasing 6 percent a year.

17 JUDGE STROTHER: Is that it, Mr.
18 Driver?

19 THE WITNESS: That is it.

20 JUDGE STROTHER: Okay. USDA, your
21 witness, if you have any questions.

22 MS. SCHMAEDICK: Yes, Your Honor. This

1 is Melissa Schmaedick.

2 JUDGE STROTHER: Your witness.

3 BY MS. SCHMAEDICK:

4 Q Thank you. And thank you, Mr. Driver,
5 for your testimony.

6 So, according to your statement, you
7 are currently classified as a small grower.

8 A Correct.

9 Q And I wanted to ask you a similar
10 question to the question that I asked Mr. Bill
11 Tos. And that is, what is your -- what do you
12 anticipate in terms of an impact on you if this
13 program were implemented? Do you anticipate that
14 your expenses or your deductions made by handlers
15 to increase?

16 Do you expect any additional costs?

17 Or do you expect benefits?

18 A I will see no additional costs. The
19 assessments are set by the board, and those are
20 not projected to change at this time. Therefore,
21 I will see no increase in costs.

22 I am hopeful that when more people put

1 skin in the game -- and I'm talking about the
2 handler market -- the handler processors, the
3 marketers -- if they are encouraged to put more
4 skin in the game and advertise walnuts at a
5 greater level than what they have, we will grow
6 the market.

7 And so, I'm looking for that type of
8 partnership. I think that it's a win/win for all
9 parties.

10 Q And you mentioned in your testimony
11 that you're specifically a walnut farmer. Do you
12 grow any other type of nut crops?

13 A Yes. I grow almonds. I have grown
14 cherries. And we're a fourth generation nursery
15 family but I'm retired from the walnut nursery
16 business.

17 Q So, you're experienced as an almond
18 farmer. Do you work with handlers that
19 participate in the almond credit-back program?

20 A Yes, I do.

21 Q And have you experienced any negative
22 impact on, on you in terms of your grower

1 receipts from those handlers --

2 A Not at all.

3 Q -- since you've been in that program?

4 A Not at all.

5 Q Have you experienced benefits from the
6 almond credit-back program or that you perceive
7 to be related to the almond credit-back program?

8 A Yes. I believe that many of the new
9 products that we see in the almond business,
10 large and smaller handlers combined, are the
11 result of increased dollars being spent in
12 marketing. And I would expect to see the same in
13 walnuts.

14 Q Okay, thank you.

15 You mentioned that you are also, let's
16 see, part of the California Walnut Board
17 Production Research Committee.

18 A Yes.

19 Q Are you at all involved with the
20 Marketing Order Review Committee?

21 A I'm not all involved with the MORC.

22 Q Okay, thank you.

1 So, I'm curious then, if you are not
2 involved with the MORC did you -- how did you
3 learn about these proposals? Did you get
4 information through outreach activities or?

5 A I'm a member on the California Walnut
6 Board, so it came under my purview.

7 Q Okay. And what about your impression
8 of outreach activities, do you, do you think that
9 your fellow producers have had access to
10 information?

11 A Well, I do. I've never been one to be
12 shy about voicing my opinions. And, yeah, I can
13 be kind of a missionary on these kinds of things
14 because I see that these -- that this proposal is
15 basically a win/win for grower and for handlers.

16 I'm not concerned at all about whether
17 or not a handler chooses to participate in this
18 program. He's going to benefit whether he
19 participates in it or not.

20 It's kind of the same thing with
21 health research. Health research has done more
22 for all nuts, especially walnuts, since we began

1 it. It's embraced all folks in the world nut
2 market, and I'm kind of proud that I was there
3 when the Walnut Board funded some of the first
4 health research projects, the Walnut Commission.

5 Q Thank you.

6 On page 2 of your testimony, right at
7 the very top, the first full paragraph, you state
8 that the walnut industry generates \$1.8, almost
9 \$1.9 billion in farm gate revenue. Do you happen
10 to recall where that data came from or that
11 number comes from?

12 A I do a lot of perusing through
13 National Agricultural Statistics Service and
14 CASS, California Agricultural Statistics Service,
15 and other walnut sites, so I do not know exactly
16 where I got that. But I would not be surprised,
17 it's a multiplier effect.

18 Q Thank you.

19 I know someone else referred to this
20 number of 85,000 jobs directly and indirectly.
21 Do you recall where that number came from?

22 A No, I do not.

1 Q Okay, thank you.

2 Were you, were you participating in
3 this hearing when Exhibit 15 was entered into the
4 record? I believe that was Mr. Chuck Crain's
5 exhibit.

6 A Yes. I've been here all day and I saw
7 that.

8 Q Okay. There's one number that really
9 stood out to me, and that is looking at the net
10 return to growers per acre, and it's a negative
11 2,774. That's a pretty big number.

12 I was wondering if you could talk to
13 us about your experience as a grower and how this
14 negative return is impacting your operations in
15 general?

16 A That gets very, yeah, that gets very
17 personal. And I would prefer to not go into
18 detail on that. But I can tell you that it has
19 had -- it has strategic implications in our
20 farming operations. I'll just leave it at that.

21 Q Sure. I appreciate your response.
22 Thank you.

1 My impression -- and I'll try to
2 format this as a question -- but given that
3 striking number, my question is do you feel that
4 the program is immediately necessary in terms of
5 the industry's ability to help farmers regain
6 their economic footing?

7 A I absolutely do. And I will say that
8 I believe -- this is my own personal opinion, not
9 backed up by -- because it changes from grower to
10 grower, but I believe that for most growers with
11 a normal debt load, breakeven is \$0.85 a pound.

12 We've seen two instances where it was
13 down in the sixties, and I think we're headed
14 there again.

15 Q Just to verify, you said that your
16 breakeven point is \$0.85 per pound?

17 A I believe it is.

18 Q Okay, thank you. That's helpful.

19 I have --

20 A That's why I was so interested in
21 hearing the Chinese say that they felt that their
22 breakeven -- and that was without us even

1 prompting them to say that -- that's what I heard
2 them say. Now, that was all in their units of
3 measure and I had to convert it all.

4 Q I'm curious, is there a -- in your
5 opinion, a quality difference between U.S.
6 product and Chinese product?

7 A Absolutely. And that's been our
8 calling card, and will probably continue to be.
9 But the -- I think that the major issue is not
10 will we meet them in the marketplace, the major
11 issue is will they buy from us again? And the
12 current, the current situation on that front
13 looks pretty bleak.

14 We also know that the Belt and Road
15 Initiative by China is going to meet our walnuts
16 in Europe.

17 Q I'm sorry, I'm not -- I don't think I
18 understood you correctly. Which initiative?

19 A Well, China has an initiative to get
20 their products out in all directions from their
21 country, even some of their land-locked areas of
22 the country. And that initiative goes through

1 other countries with walnuts into Europe. And
2 that's a rather new thing.

3 Q And just for clarification in the
4 record, what did you call the initiative? What
5 is the name of it?

6 A The Belt and Road Initiative.

7 MS. SCHMAEDICK: Court reporter, did
8 you get that?

9 COURT REPORTER: Yes.

10 MS. SCHMAEDICK: Okay, thank you.

11 Okay. Well, thank you very much for
12 your testimony. I have no further questions at
13 this time.

14 THE WITNESS: Thank you.

15 JUDGE STROTHER: Anything further, USDA
16 personnel, examination of this witness?

17 DR. HINMAN: Don Hinman. Actually,
18 this was a great exchange between Melissa
19 Schmaedick and Mr. Driver. I want to thank them
20 both. You anticipated all my questions, so I
21 have none. Thank you.

22 THE WITNESS: Thank you.

1 JUDGE STROTHER: No questions from Mr.
2 Hinman.

3 Anyone else from USDA?

4 (No response.)

5 JUDGE STROTHER: Hearing none, anyone
6 from the industry have an examination of Mr.
7 Driver?

8 MS. HOAGLAND: California Walnut Board
9 is muted.

10 JUDGE STROTHER: Okay. Can you unmute
11 the California Walnut Board, please.

12 MR. HATCH: They're unmuted.

13 MS. CONNELLY: Thank you. Thank you,
14 Judge.

15 I do not have any questions. This is
16 Ms. Connelly.

17 Anyone on the phone?

18 (No response.)

19 JUDGE STROTHER: Okay, hearing none,
20 any examination from anyone participating in this
21 hearing via Zoom?

22 (No response.)

1 JUDGE STROTHER: Hearing none, I take
2 it I see nothing in the chat -- Zoom webinar chat
3 function that anyone has any questions. Is that
4 correct, Ms. Hoagland?

5 MS. HOAGLAND: Yes, that's correct.
6 And there's no questions via text right now
7 either.

8 JUDGE STROTHER: Do you agree, Mr.
9 Hatch?

10 MR. HATCH: Very good.

11 JUDGE STROTHER: Okay. Anyone on the
12 telephone that has not fit within a previous
13 category of participants that has any questions
14 for this witness?

15 (No response.)

16 JUDGE STROTHER: All right. Since
17 you're acting as your own lawyer basically for
18 these purposes, Mr. Driver, anything that you
19 wish to add?

20 THE WITNESS: No, sir, nothing further.

21 JUDGE STROTHER: Okay. We have one
22 exhibit, that's Bob Driver's CWB testimony, and

1 we identified that as Exhibit 23.

2 Anyone have any objection to admitting
3 Exhibit 23 into the record?

4 (No response.)

5 JUDGE STROTHER: Hearing none, Exhibit
6 23 is admitted into the record.

7 (Whereupon, the above-
8 referred to document,
9 previously marked as Exhibit
10 No. 23 for identification,
11 was received in evidence.)

12 Mr. Driver, you may step down from the
13 virtual witness stand.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 JUDGE STROTHER: Will there be another
17 witness?

18 DR. HINMAN: Your Honor, Don Hinman,
19 for questions.

20 JUDGE STROTHER: You have a question?

21 DR. HINMAN: Yes. The announcement
22 said that it could end at 7:00 p.m. Eastern, 4:00

1 p.m. Central time, not 8:00.

2 JUDGE STROTHER: I thought that --
3 my impression as well. The corrected notice that
4 was Exhibit 2, did that change the ending date?

5 MS. CHILUKURI: No, Your Honor. The
6 Federal Register Notice says until 8:00 p.m.

7 So, what are you referring to, Mr.
8 Hinman?

9 DR. HINMAN: The website. I just
10 looked at it.

11 MS. CHILUKURI: Okay.

12 JUDGE STROTHER: Which part of the
13 website?

14 DR. HINMAN: I'll go back in.

15 MS. CHILUKURI: So, official notice,
16 this is Exhibit 2 for USDA, Special Notice is
17 provided through the Federal Register Notice.
18 But I would request that we proceed until the
19 timing set forth in that notice, Your Honor.

20 JUDGE STROTHER: Yeah, I see it says
21 8:00 a.m. The home page for any reference, the
22 hearing dates and the documents still say 7:00

1 p.m. But I think in this case the official
2 Federal Register Notice does say 8:00 p.m., and I
3 think that's the one we use.

4 Thank you for bringing that up, Mr.
5 Hinman.

6 Okay. I have next the next witness is
7 Donald Norene. Norene. Sorry for the
8 pronunciation. Is this witness available?

9 I see you're on -- we need to unmute
10 Robert Norene.

11 MR. HATCH: Unmuted.

12 MR. NORENE: Okay. Thank you, Your
13 Honor.

14 JUDGE STROTHER: How do you pronounce
15 your name?

16 MR. NORENE: My name is Donald Norene.

17 JUDGE STROTHER: Okay, Mr. Norene.

18 MR. NORENE: D-O-N-A-L-D capital N-O-R-
19 E-N-E.

20 JUDGE STROTHER: Very good. I don't
21 think you need to be sworn in for that purpose,
22 but I'll swear you in now for the rest of your

1 testimony.

2 Please raise your right hand.

3 WHEREUPON,

4 DONALD NORENE

5 Was called for examination, and having been first
6 duly sworn, assumed the witness stand, was
7 examined and testified as follows:

8 THE WITNESS: Yes, I do, Your Honor.

9 JUDGE STROTHER: I have one exhibit
10 I'll identify as Exhibit 24, Donald Norene, CWB
11 testimony.

12 (Whereupon, the above-
13 referred to document was
14 marked as Exhibit No. 24 for
15 identification.)

16 THE WITNESS: Thank you.

17 JUDGE STROTHER: Thank you. And
18 anything else preliminary? You may give your
19 statement now, Mr. Norene.

20 THE WITNESS: Your Honor, I'm a third
21 generation farmer. We grow walnuts, rice, and
22 cattle on our ranch. Our operation is Norene

1 Ranches, Incorporated. It's owned by my family,
2 brother, two sisters, and our children.

3 Besides growing walnuts and rice and
4 cattle we have a walnut hulling and drying
5 operation.

6 And I am testifying today as a mid-
7 class/large grower. I currently serve on the
8 California Walnut Board as a grower-at-large
9 member representing the northern half of
10 California. I serve on several committees of the
11 California Walnut Board that includes the
12 Production Research Committee, the Market
13 Development Committee, and the Executive
14 Committee, along with the Marketing Order
15 Revision Committee.

16 Today I'd like to address
17 justification for Point 8 of the Point 8 program
18 implementation.

19 Should the proposal be amended to
20 include credit-back authority, it will be
21 implemented via the authority parameters and
22 requirements proposed under the new Section

1 984.546. The board would annually set a budget,
2 and staff would communicate to the handlers their
3 available budget along with the procedures for
4 participation.

5 In addressing the program
6 implementation it is important to understand the
7 decisions and the discussion that brought us to
8 this amendment.

9 The market conditions currently and
10 ahead of us, with global trade issues, future
11 growing supply, necessitate that the board move
12 to implement this program in a timely manner.
13 This is why the proposed procedures were
14 discussed in tandem with the authority to ensure
15 that the industry could move quickly to begin
16 using the authority in anticipation of greater
17 crops to come -- if you will, keeping demand
18 ahead of supply.

19 Since I sit on the Market Order
20 Revision Committee, we spent a series of meetings
21 going over every aspect of the program and
22 discussing the procedures that would be a

1 critical part of implementation. The intent of
2 the proposal is to encourage branded market
3 promotion in the domestic market. While no
4 market is excluded, the objective is to encourage
5 more activity domestically, to grow consumption
6 through trade and consumer activities.

7 The discussion of creditable
8 expenditures was lengthy and arduous, and ranged
9 from potentially just allowing only new products
10 to various types of marketing activities, and
11 what rates of credit-back could apply. The group
12 ultimately landed on a broad base of activities
13 being fair and equitable amongst the handler
14 base, regardless of size, with a 70 percent
15 credit-back rate to entice participation in the
16 program.

17 The group held further discussions on
18 various types of rates for future discussions
19 depending upon how the program is received and
20 utilized. The informal rulemaking process will
21 allow us to modify the program over time as needs
22 change.

1 Thank you. That's the end of my
2 testimony. I'd be happy to answer any questions.

3 JUDGE STROTHER: Any questions for this
4 witness from USDA?

5 MS. SCHMAEDICK: Yes, Your Honor.
6 Melissa Schmaedick, USDA.

7 JUDGE STROTHER: Ms. Schmaedick --

8 BY MS. SCHMAEDICK:

9 Q Thank you. Mr. Norene, thank you for
10 your testimony.

11 A Thank you.

12 Q And good afternoon to you.

13 A And to you.

14 Q A couple of things here that kind of
15 triggered some questions for me in your
16 testimony.

17 You mentioned that there's a necessity
18 to implement the program in a timely manner. Can
19 you speak to -- I'm sorry?

20 A Can I speak to that?

21 Q Yes, please, can you speak to that?

22 A During the last couple of years our

1 reliance on export markets has bitten us in the
2 back pretty hard. Previous raison d'etres that
3 presenters have indicated and outlined, losses to
4 the industry in gross dollars and net dollars.

5 I personally have been frustrated for
6 a number of years about the lack of growth in our
7 domestic market, that half a pound per person
8 that Bill Carriere alluded to. And we need -- we
9 should have already done it -- but we need to
10 find additional motivation, additional ways to
11 increase our domestic consumption across a
12 broader base of consumers. And that's why I say
13 in a timely manner.

14 In fact, I think the time has already
15 come and gone. But the sooner we can get this,
16 this project, this credit-back program on the
17 road, the better off the industry will be.

18 Q Are you aware of any target
19 implementation date that the MORC or the board
20 has, has defined?

21 A Well, it's been a moving target with
22 the various issues that have come up, but we

1 would be hopeful if things moved forward in a
2 relatively reasonable manner that perhaps
3 sometime in mid or late spring of 2021 the
4 program could be implemented.

5 The Market Development Committee and
6 the Executive Finance Committee of the California
7 Walnut Board set aside a portion of the budget
8 for the year beginning 2020-2021 to allow for
9 credit-back if growers voted to amend the
10 marketing order to allow it.

11 So, we're hopeful that that would be
12 an opportunity.

13 Q Okay, sir. You are hopeful that would
14 be implemented by -- I believe, if I'm
15 remembering the fiscal year/crop year correctly,
16 later this summer, late August or so?

17 A Whenever -- whenever the vote would go
18 out to the grower community. Late August,
19 September, whenever that might happen. We need
20 that affirmation and certification from the
21 Secretary of Agriculture to move ahead.

22 Q You mentioned that you are, you're

1 proposing both the authority and procedures in
2 tandem. And that's an interesting comment. Can
3 you explain a little bit more by what you mean by
4 in tandem?

5 A Well, obviously the authority enables
6 the use of that amendment that was done in 1980
7 to allow credit back for marketing order
8 programs. The program, if you will, being done
9 in tandem was we list -- we list 9 or 11 points,
10 steps, whatnot, to implement the credible
11 expenses -- or creditable expenditures for
12 handlers to recover up to 70 percent of their
13 assessments paid.

14 So it was, I thought it was very
15 prudent of the committee to do these things
16 simultaneously to allow that very timely
17 implementation. That was the thrust of our
18 efforts. And I think we were well guided in
19 those efforts. Had great discussion. The, you
20 know, the two efforts worked themselves well
21 together.

22 And so I hope -- hopefully that

1 squares up your question.

2 Q Yes, it does. Thank you.

3 And a couple of other witnesses have
4 alluded to this process of informal rulemaking.
5 Can you explain your understanding of informal
6 rulemaking and how that applies to this
7 particular program?

8 A I think the, you know, the easy
9 question, at least in my mind, about the informal
10 rulemaking is maybe adjusting anything from the
11 \$0.70 credit-back rate to creditable expenditures
12 and trying to, trying to motivate the program to
13 accomplish different goals, to improve different
14 aspects of domestic consumption and domestic
15 advertising.

16 Anything more specific than that, I
17 would defer to Michelle Connelly to answer for
18 you.

19 Q Would it be fair to say that the
20 informal rulemaking process would allow you to
21 troubleshoot or fine-tune the parameters of your
22 proposed program to be able to react to the

1 program as you gain more experience?

2 A Exactly. That's the -- that was our
3 premise.

4 Q Okay.

5 A We don't, we don't suppose to assume
6 that we -- that we'll hit the mark 100 percent
7 right out of the bag. You know, this is a new
8 adventure for the walnut industry, and I think
9 it's a very appropriate effort. But the program
10 will need fine-tuning.

11 Q Thank you. And you mentioned the
12 creditable expenditures. I don't know if we've
13 heard that term yet. Can you explain what you
14 mean by creditable expenditures?

15 A Well, there's a generalized list of
16 activities, you know. One of the things of keen
17 interest to me that's been mentioned is the
18 development of snack food products. So, you have
19 a product development effort. You have a
20 production introduction effort, and product
21 promotion.

22 So, all of those particular efforts

1 are creditable expenses, much in the same way as
2 television advertising would be to an extent.
3 But while we started off in development of this
4 amendment with the idea of the introduction of
5 new products being the whole reason for
6 creditable expenditure, that is, a credit-back
7 expense, we eventually transitioned.

8 But I think we're still keenly
9 interested in seeing products that would cut
10 across a wider group of consumers rather than the
11 ones that we're serving today where we only serve
12 about 40 percent or so of the domestic users,
13 domestic households.

14 Q By any chance do you have a copy of
15 Exhibit 1 with you? It's a copy of the Federal
16 Register Notice that lays out the proposed
17 amendments and the proposed regulatory text. Do
18 you have that with you?

19 A I'd have to go through my email and
20 bring it up. It's about a 3-page document?

21 Q Perhaps the document curator could put
22 that up on the screen for you.

1 MR. HATCH: I'm doing it now.

2 MS. SCHMAEDICK: Thank you.

3 THE WITNESS: Yes. I see it. Thank
4 you.

5 BY MS. SCHMAEDICK:

6 Q Yes. So, if we could go to the last
7 page of that exhibit where, let's see, it's in
8 the left-hand column under paragraph (e) it says
9 Qualified Activities.

10 Does that correspond to what you mean
11 by creditable expenditures?

12 A Left-hand side. I'm struggling to
13 find paragraph (e) on the left. I have paragraph
14 (d), Credit-Back -- well, now, now it
15 disappeared.

16 Oh, there you go, Qualified
17 Activities. Credit-back granted, okay. Would
18 you like me to read that to myself and respond?

19 Q Yeah. You certainly don't need to
20 read it all into the record. I'm just I'm trying
21 to ensure that I'm understanding the correlation
22 between your term qualified activities -- I mean

1 your creditable expenditures and qualified
2 activities.

3 A Ms. Schmaedick, my, you know, my
4 creditable expenses is basically the credit-back
5 term that's identified in the notice. The terms
6 are interchangeable in my mind.

7 Q Okay, thank you. And so -- and I
8 apologize for asking you all these questions.

9 A Oh, no. No problem.

10 Q I wish I had asked some of the other
11 witnesses this question. But this is a fairly
12 extensive list. And you indicated that in your
13 discussions with the MORC that there's quite a
14 bit of discussion and debate about what should be
15 included in this list. Is that correct?

16 A That's correct.

17 Q So, I have some specific questions
18 about -- and if these questions are not ones that
19 you're comfortable answering, just please let me
20 know.

21 But, for example, under (e)(1) it
22 talks about credit-back for professional

1 practices and rates.

2 Let's see. Where's the part I'm
3 trying to get to?

4 A Okay. I've -- I've read the
5 paragraph.

6 Q My question is you're not -- the first
7 sentence in that paragraph (3)(i) says, Credit-
8 back granted by the Board shall be that which is
9 appropriate when compared to accepted
10 professional practices and rates for the type of
11 activity conducted.

12 Can you explain your understanding of
13 that sentence? What does that mean exactly?

14 A My interpretation is that is something
15 that would be appropriate for market promotion
16 work, advertising, direct advertising, that, you
17 know, there are set rates for, whether it's
18 advertising work or development of advertising,
19 perhaps the extent of product development and
20 product introduction into a market.

21 You know, the typical term we use is
22 a -- oh, some sort of a, of a set of products set

1 out for people to sample in a Costco or some
2 other affiliated store or store of that nature,
3 where folks can see a new product, taste a new
4 product, and get some sense of the nutritional
5 value and tastefulness of it.

6 So, all of those activities would have
7 professional fees that would be a standard rate
8 and whatnot. That's my interpretation.

9 I think in the case of a new product
10 being developed, whether it's some of the items
11 that the California Walnut Board has worked on,
12 or private companies have worked on, there aren't
13 -- there aren't specific rates and typical
14 professional fees if you're developing a snack,
15 snack pack product and the packaging to go with
16 it. If you're developing a walnut butter or a
17 walnut meat for tacos, or a plant-based
18 substitute for a meat product, those are risky
19 businesses that need a lot of incentive for folks
20 to move ahead.

21 Q And so further on in that paragraph it
22 says, "the Board shall grant the claim if it is

1 consistent with practices and rates for similar
2 activities."

3 Is the intent of that statement to
4 programs' abuse of claims for rates much higher
5 than standard rates? Is this intended to make
6 sure that the reimbursement is fair and
7 consistent with market practices?

8 A That was my impression, yes.

9 So, you know, the California Walnut
10 Board has been doing promotion activities now for
11 several years: advertising, development,
12 magazine, print, print advertising, television
13 advertising. And so I think we have a pretty
14 good handle on professional rates and what should
15 be consistent. And exorbitant fees would
16 probably lead to denial of some claims.

17 Q And further down in that same column,
18 I'm looking at paragraph (e)(5) and then little
19 (i) below that. Okay. And I'll, I'll just read
20 it for you because I know it can be difficult to
21 navigate it and separate it from others.

22 But it says that, it starts with

1 Credit-back shall be granted for paid media...

2 And then it ends with ...commission costs not to
3 exceed 15 percent of gross.

4 Again, is that sort of a -- what's the
5 purpose of that, that language there at the end
6 of that paragraph? Do you recall?

7 A I, you know, I remember the
8 conversation about that. But as far as the
9 specific number 15 percent of gross, I would
10 defer to Ms. Connelly about that number. My
11 impression of that is that that is currently what
12 the California Walnut Board usually pays for
13 development costs. But I don't know that for
14 sure off the top of my head.

15 So, I would defer that answer to
16 Michelle.

17 Q Based on your recollection, does that
18 language or is that language also intended to
19 address I guess compliance and ability to prevent
20 abuse of the credit-back program?

21 A Yes. That's correct.

22 Q Okay. Also wanted a question, and

1 this may be, again, because you're not directly
2 involved with handler activities, but I'm looking
3 at -- let's see, this would be in the middle
4 column, paragraph (iii) that falls right under
5 paragraph (D) and it talks about handlers selling
6 multiple complementary products. Do you remember
7 the discussion about that at all --

8 A Yes.

9 Q -- in the MORC?

10 A Specifically. And I would answer that
11 by saying that, you know, we, we felt that it was
12 prudent and necessary that if walnuts comprised
13 only 20 percent of, say, a trail mix or 5 percent
14 of a cereal box, et cetera, that the product
15 would not have credit-back for more than the
16 percent by volume or weight that walnuts
17 comprised of the product.

18 Q Thank you.

19 Another question for you -- I promise,
20 this is the last one.

21 A Yes. Maybe you're stretching my
22 abilities here. I'm not a marketer by

1 profession.

2 Q No, no, no, this is more based,
3 closely directed to the discussions that were had
4 in the MORC.

5 A Thank you.

6 Q And so my last question has to do with
7 paragraph (f), which is the third column. And it
8 says, addresses appeals. Do you recall any of
9 the discussion related to the language in
10 appeals, the line up?

11 A Yes, I do. And we thought it was
12 critical that there was an appeal process. You
13 know, justification and the justification for an
14 expenditure, and the expenditures that perhaps
15 stretch the limits of the parameters that we set
16 originally would help us fine tune the program
17 going forward. If we're getting an excessive
18 number of appeals for marketing efforts that we
19 find might move, move product well, then an
20 adjustment would be appropriate to fine tune our
21 program.

22 So, it serves two purposes, not only,

1 not only a handler marketing a product but also
2 to the California Walnut Board, and management,
3 and the Executive Committee to be able to
4 understand the impacts that we're having with
5 handlers being able to market new products or
6 improve their marketing of their branded product.

7 Q Thank you. I really appreciate your
8 taking the time to answer those questions. And I
9 have no further questions for you. Thank you.

10 A Thank you.

11 You know, Ms. Schmaedick, if I might
12 make a question that's been, that's been widely
13 asked about outreach to growers regarding this
14 program. And Michelle Connelly has made valiant
15 outreach attempts, by invitation to speak to
16 grower groups, not just the UCC Extension
17 Meetings but, you know, she's, she's spoken to
18 other small grower groups.

19 I am also a member of a small
20 organization called the Walnut Bargaining
21 Association. And we have spoken with our
22 membership. And tried outreach to a number of

1 growers, especially growers who might be
2 influential in speaking, you know, to fellow
3 growers.

4 So, you know, from my perspective the
5 outreach has been excellent. That doesn't mean
6 it's been wide ranging to 4,400 or so growers.
7 I'm not sure that everybody's been touched. But
8 a significant part of the grower community,
9 large, small, medium-sized growers have all had
10 an opportunity to listen about this proposal.
11 And as things go forward, should the proposal be
12 put to vote we'll have to have more
13 conversations.

14 Thank you.

15 JUDGE STROTHER: Ms. Schmaedick, if you
16 have any follow-up questions to that, I think
17 it's just as easy for you to ask if you need to
18 ask them right now. And then we'll circle back
19 around with the USDA as well.

20 MS. SCHMAEDICK: No, Your Honor, thank
21 you. I have no further questions. That's okay.

22 JUDGE STROTHER: Anyone else from USDA

1 have questions of this witness?

2 DR. HINMAN: Don Hinman, USDA.

3 JUDGE STROTHER: Mr. Hinman, your
4 witness.

5 DR. HINMAN: Yes, sir.

6 BY DR. HINMAN:

7 Q Thank you, Mr. Norene. That was very
8 helpful testimony. We appreciate it.

9 I want to focus on your farming
10 operations, that you offer walnut hulling and
11 drying operation. Now, if we go back to the
12 first witness had a description of the process
13 there, and I think he said typical harvesting is
14 about 25 percent moisture. And then by the time
15 it gets to the processor it needs to get down to
16 7 percent.

17 Is that pretty much -- is that your
18 experience as well?

19 A That's an industry standard. That's
20 correct.

21 Q That's an industry standard. Okay.
22 Okay. So when you help -- so, you

1 take nuts from many other growers and help --

2 A No, not --

3 Q -- dry them when they can move it --

4 A Not from many other. We principally
5 hull and dry our own walnuts. And I do my
6 cousin's walnuts. And that's it.

7 Q Okay. And that's fairly typical, most
8 mini-growers do their own hulling and drying?

9 A Most growers at this point in time
10 have a commercial walnut huller/dryer process or
11 hull and dry their walnuts.

12 Q Okay. Okay, thank you.

13 A And it varies, Mr. Hinman. It varies.
14 You know, there are large growers who have their
15 own facility. But there are a number of small
16 growers who have, have no opportunity to afford
17 the cost of putting in the iron required to hull
18 and dry walnuts.

19 Q All right. Okay. And then when those
20 others that you just mentioned there, can they --
21 the process of -- they're responsible for that
22 when they sell it to the handler/processor to

1 have that 7 percent, and that's the basis of the
2 transaction when it moves to the handler;
3 correct?

4 A Yes.

5 Q Okay, thank you.

6 And then you used the word mid-large
7 grower. In terms of annual walnut sales, does
8 that mean in several recent years you have been
9 over a million dollars in walnut sales annually?

10 A Well over.

11 Q Well over.

12 A Well over a million.

13 Q Okay, very good. Yes, that's what I
14 thought.

15 Because across the network the
16 government focuses, we define people on the
17 particular standards set by the Small Business
18 Administration, which is now how most industries
19 measure small and large. That's how we do for
20 rulemaking. So, thank you for that.

21 A I understand. Thank you.

22 Q And then I want to ask one more

1 question and then ask you of the others, all the
2 witnesses have testified to the effect that the
3 cost, you know, from the amendment would be zero
4 basically to a grower, and the benefits
5 substantial. So I'm making sure you want to
6 state essentially to your agreement or
7 disagreement with that statement.

8 A Yes, I think I came to the conclusion
9 that this is -- I didn't start out that way. I
10 would be frank to say that I was reluctant to
11 endorse the proposal. But specific incidences
12 and examples, not all of which came from MORC
13 meeting, some came from outside meetings of the
14 California Walnut Board, brought me around to
15 think that this, this proposal has significant
16 merit and can benefit all of us very well.

17 DR. HINMAN: All right. Well, thank
18 you very much, Mr. Norene. I appreciate that.

19 That's all my questions, Your Honor.

20 THE WITNESS: You're welcome.

21 JUDGE STROTHER: Thank you, Mr. Hinman.

22 Anyone else from USDA have any

1 questions?

2 MS. VAWTER: Yes. This is Terry
3 Vawter. I have a question of Mr. Norene, please.

4 JUDGE STROTHER: Your witness, counsel.

5 BY MS. VAWTER:

6 Q Mr. Norene, in your testimony I
7 believe I heard you say that you would view the
8 appeals process as not only a method by which a
9 handler would get equitable treatment and review
10 of any problems, but you would also view the
11 appeals process as an opportunity for the board
12 to see if there were areas which needed to be
13 corrected.

14 Did I understand that correctly?

15 A Yes, Terry. That, that was my
16 comment. That's correct.

17 MS. VAWTER: All right. Thank you. I
18 appreciate your comment.

19 JUDGE STROTHER: Is that it? I called
20 you counsel. I guess that's not correct, Ms.
21 Vawter.

22 Is that all you have?

1 MS. VAWTER: Yes, Your Honor.

2 JUDGE STROTHER: You muted yourself.

3 Very well.

4 Anyone else from USDA for this
5 witness?

6 MS. CHILUKURI: Yes, Your Honor. Rupa
7 Chilukuri, USDA.

8 BY MS. CHILUKURI:

9 Q Mr. Norene, you, in speaking to Dr.
10 Hinman you had mentioned that you initially had
11 reluctance to support this proposal but you've
12 come around. Can you go into a little bit more
13 detail about the initial reluctance and
14 subsequently why you changed your mind?

15 A As I understood the proposal when it
16 was first being discussed -- and that, that goes
17 back to strategic planning which was early 2019 -
18 - it was being discussed mostly as an advertising
19 credit-back program. I was concerned that it
20 would primarily benefit the cost aspect of
21 particular handlers, and would not benefit the
22 industry as a whole.

1 But as things moved forward and I
2 gathered outside information about product
3 development that was being done by a number of
4 handlers, not just those in the room so to speak,
5 also opportunities for ingredients and other
6 products and the means to introduce those, it
7 became apparent to me that the, you know, the
8 program had merit beyond just offsetting
9 advertising costs.

10 And as we developed the program and
11 broadened, broadened its capabilities for credit
12 back I, I believed that it had a lot of merit.
13 But I thought it was more resource -- it occurred
14 to me that it's more resourceful to have a person
15 with skin in the game, so to speak, that had a
16 product to sell, to be out there selling a
17 product and getting credit back for his efforts,
18 his or her efforts, that we could actually expand
19 or spend by the California Walnut Board on
20 domestic promotion work by encouraging and
21 leveraging handlers to work either in product
22 development, introduction, and their advertising

1 campaigns.

2 So, all of those things normally came
3 around to help me focus on moving forward with
4 this project.

5 Q Thank you. And can you talk a little
6 bit more about I guess the board's generic market
7 promotion efforts? I'm just trying to figure out
8 the differences between the generic promotion
9 efforts and if this authority is in place, what,
10 what qualified activities are available to
11 handlers.

12 A Well, I think the list of qualified
13 activities is fairly straightforward, I think
14 that's been answered. The board's generic
15 advertising, whether it's print advertising, we
16 do some television advertising usually in
17 specific markets with supermarket chains or big
18 box stores, whatnot. So, we have, you have
19 television, radio, print advertising. But it's
20 all generic. It markets and encourages folks to
21 buy California walnuts.

22 It may be combined with American Heart

1 Association for healthy heart aspects. But it's
2 not a branded product that is being pushed.
3 There's nobody who comes to a store, a
4 supermarket chain with a new product that says,
5 look, I have this. I can supply this for you for
6 X number of dollars per unit for so many years.
7 We don't have that capability with the California
8 Walnut Board.

9 And that capability seemed to me to be
10 more effective than our generic advertising that
11 we are able to do.

12 MS. CHILUKURI: Okay. Thank you. I
13 have no further questions at this time.

14 JUDGE STROTHER: Thank you, Counsel.

15 Anyone from USDA have any questions?

16 (No response.)

17 JUDGE STROTHER: Hearing none, any of
18 the interest proponent personnel have questions
19 for this witness?

20 MS. HOAGLAND: Bill Carriere has a
21 question.

22 MS. CONNELLY: This is Ms. Connelly.

1 I see that Mr. Tos in on the phone. Mr. Tos?

2 JUDGE STROTHER: Well, first with Mr.
3 Carriere then Mr. Tos, Ms. Connelly.

4 MS. CONNELLY: There's nothing from our
5 end, sir.

6 MR. CARRIERE: Hi. This is Bill
7 Carriere. I have a question.

8 BY MR. CARRIERE:

9 Q Mr. Norene, I think I know the answer
10 to this. I heard you say, you mentioned the
11 handlers would get 70 percent of their
12 assessment, potentially 70 percent of their
13 assessments paid back from credit back. Is that
14 -- did you, did you misspeak there? Because I
15 was under the impression it was significantly
16 less. Maybe 70 percent refers to the match
17 rather than the percent.

18 Do you know what the percent we can
19 get back as a handler?

20 A You went through the, Mr. Carriere,
21 you went through the scenario. And if I said
22 that, that was a mistake.

1 Q Okay.

2 A You went through the formula scenario,
3 100,000 ton processor and a 700,000 ton crop year
4 would be able to get one -- 70 percent of one-
5 seventh of total assessments back.

6 So, what I meant by the 70 percent is
7 of a, of an expense, a creditable expense, that a
8 handler could be \$0.70 back from the \$1.00 he
9 spent.

10 Does that answer your question?

11 Q I think so. Because isn't it true
12 that the budget we're potentially setting aside
13 as the board is somewhere around 15 percent of
14 the budget?

15 A Yes. Yes, that's correct. My
16 understanding is it's, you know, in the range of
17 \$3.5 to \$4 million total.

18 Q Yeah. So, if I was, if I was 2
19 percent of the handle, my hand-off was 2 percent
20 of the handle I could potentially get 2 percent
21 of that \$3 million, of that 15 percent of the
22 budget?

1 A That's correct.

2 Q Okay, thank you.

3 A Thank you.

4 JUDGE STROTHER: Is that all, Mr.

5 Carriere?

6 MR. CARRIERE: Yes. Thank you.

7 JUDGE STROTHER: Anyone else from the
8 industry?

9 (No response.)

10 JUDGE STROTHER: Anyone that's
11 participating by Zoom that's not either industry
12 or USDA?

13 MS. HOAGLAND: I don't see any, Judge.

14 JUDGE STROTHER: Okay, no one.

15 And on chat room to them.

16 Anyone on the telephone wants to ask
17 a question?

18 (No response.)

19 JUDGE STROTHER: Okay. Circling back
20 to USDA, any follow-up on what Mr. Carriere
21 asked? Anyone from USDA?

22 (No response.)

1 JUDGE STROTHER: Okay. Hearing none.
2 We had one exhibit identified for Mr.
3 Norene, his testimony, as Exhibit 24. Any
4 objection to admission of Exhibit 24 into the
5 record?

6 (No response.)

7 JUDGE STROTHER: Hearing none, Exhibit
8 24 is admitted to the record.

9 (Whereupon, the above-
10 referred to document,
11 previously marked as Exhibit
12 No. 24 for identification,
13 was received in evidence.)

14 Mr. Norene, thank you for your time.
15 Thank you for appearing before us virtually. You
16 may step down from the virtual witness stand.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 JUDGE STROTHER: You're very welcome.

20 We have about 18 minutes. Should we
21 make use of that by calling another witness, Ms.
22 Connelly? Or do we have other housekeeping

1 matters to discuss?

2 I guess I'm going to raise one. Have
3 any other witnesses -- has anyone written in
4 wishing to testify?

5 (No response.)

6 JUDGE STROTHER: Hearing none, again
7 for the record, anyone happens to be listening
8 in, I encourage folks to get their views and to
9 have their say on the record, we can still get
10 you in. Let people know.

11 I think we're going to be meeting
12 tomorrow regardless. I think we might as well
13 use this 15 minutes and start our next witness.
14 Does anyone object to that?

15 (No response.)

16 JUDGE STROTHER: Hearing none, I call
17 Michelle Connelly to the virtual stand.

18 MS. SCHMAEDICK: I'm sorry, Your Honor.
19 This is Melissa Schmaedick.

20 JUDGE STROTHER: Yes?

21 MS. SCHMAEDICK: I believe that
22 Michelle Connelly's testimony is quite lengthy

1 and quite detailed. And it may be better to not
2 interrupt her testimony by only allowing 20
3 minutes.

4 JUDGE STROTHER: I'm at your service.
5 You're the one that has to write up the
6 recommended decision.

7 MS. SCHMAEDICK: I'm wondering if maybe
8 it would be prudent to jump ahead to Eric Heidman
9 if he is available. I don't know if he is
10 participating. But I do know that both Ms.
11 Connelly and Ms. Donoho will have a very long
12 testimony.

13 JUDGE STROTHER: Okay.

14 MS. SCHMAEDICK: I think it would be
15 difficult to interrupt them.

16 MR. HATCH: This is Andy Hatch. I
17 unmuted Eric Heidman. And if he wishes to let
18 the Court know whether he's available tonight or
19 not.

20 MR. HEIDMAN: Yes. I'm here and would
21 be available.

22 JUDGE STROTHER: Okay. You're willing

1 to testify then, Mr. Heidman?

2 MR. HEIDMAN: Yes, sir.

3 JUDGE STROTHER: Anyone have any
4 objection to taking Mr. Heidman ahead of Ms.
5 Connelly and Ms. Donoho?

6 (No response.)

7 JUDGE STROTHER: I hear no objections.
8 Mr. Heidman, raise your right hand,
9 please.

10 WHEREUPON,

11 ERIC HEIDMAN

12 was called for examination, and having been first
13 duly sworn, assumed the witness stand, was
14 examined and testified as follows:

15 THE WITNESS: I do.

16 JUDGE STROTHER: I have one exhibit for
17 Mr. Heidman marked for identification, Exhibit
18 29. And that's identified as Diamond Foods
19 Testimony.

20 (Whereupon, the above-
21 referred to document was
22 marked as Exhibit No. 29 for

1 identification.)

2 With that, Mr. Heidman, you may go
3 ahead and present your statement.

4 THE WITNESS: All right. Thank you,
5 Your Honor.

6 My name Eric Heidman. That's E-R-I-C
7 H-E-I-D-M-A-N.

8 COURT REPORTER: Mr. Heidman, I'm so
9 sorry to interrupt you, sir, but can you possibly
10 get closer to your microphone?

11 THE WITNESS: Yes. How's that?

12 COURT REPORTER: Much better. Thank
13 you.

14 THE WITNESS: Okay. Apologize for
15 that. Let me start over.

16 My name is Eric Heidman. The name is
17 spelled E-R-I-C H-E-I-D-M-A-N. And I'm with
18 Diamond Foods, Incorporated.

19 Thank you for the opportunity to speak
20 today. I would like to provide my perspective,
21 coming primarily from that of a grower
22 representative of a large handler, but also as a

1 small family grower and a California Walnut Board
2 member. All of those perspectives are clearly
3 and directly related because we are all part of
4 the same industry, working for a common goal: to
5 keep the California walnut industry profitable
6 and sustainable.

7 Simply look at the mission, vision,
8 and priorities of the California Walnut Board,
9 and one can see how the proposed credit-back
10 authority naturally aligns with the board's
11 goals. The board's mission is to cultivate
12 industry prosperity by increasing worldwide
13 demand for California walnuts, with a set of core
14 values that focus on doing what's right for the
15 industry long-term, operating with integrity and
16 honesty, and striving for excellence and
17 innovation, with a purpose to enhance diet and
18 health foods with flavorful California walnuts.

19 The board has set out strategic goals
20 of increasing demand by 196,000 tons, with 64,000
21 tons coming in the domestic market. And I want
22 to kind of focus on the domestic market because

1 that's really what the board's function really
2 is.

3 And within the domestic market there's
4 four primary segments the board has lined out for
5 increased demand, and that's retail, industrial,
6 institutional, and restaurant channels.

7 My support and advocacy of the
8 proposed credit-back authority stems from my
9 viewpoint into the industry and that of the
10 growers that Diamond represents. Recent industry
11 marketing campaigns have come under scrutiny by
12 growers and handlers who believe they have not
13 proven effective enough to maintain pace with
14 supply and keep grower prices stable. As an
15 industry, we want to know our dollars are being
16 put to the most effective use. The desire and
17 personal obligation to better the industry is to
18 challenge the status quo and find new or
19 established methods to increase walnut demand
20 beyond traditional programs.

21 The highly seasonal demand of walnuts
22 needs to be better balanced throughout the year.

1 Due to this seasonality and its increasingly
2 commoditized global nature, walnuts have
3 experienced great price volatility. This
4 volatility is not advantageous to growers, who
5 ultimately bear the end result of the market
6 changes, but it is equally detrimental to
7 handlers, brokers, buyers, and manufacturers.

8 The price volatility creates excessive
9 year-over-year as well as in-season risk which
10 not only compresses marketing windows, but
11 ultimately suppresses the greater utilization of
12 walnuts. No party wants to take an inventory or
13 cash position when there is economic risk
14 associated with market prices greatly moving up
15 or down. This situation is not conducive to
16 creating stable and predictable growth.

17 With the market swings, growers have
18 been the recipient of incredible variability at
19 the farm gate level. A grower's ability to
20 sustain annual return swings of greater than 45
21 percent is exceptionally difficult for any length
22 of time.

1 In addition, to have 2 of the past 4
2 years result in returns below the cost of
3 production, it is clear something proactive must
4 be done. Combine those results with the future
5 global supply projections and increasing market
6 competition from China, Chile, Eastern Europe, et
7 cetera and, quite simply, demand for California
8 walnuts must grow if our industry is to be
9 sustainable.

10 Often grower frustration with low
11 returns falls back on the high-profile California
12 Walnut Board domestic advertising campaigns and
13 causes all parties to question if that is the
14 best spend for the majority of the California
15 Walnut Board assessments. This is not to
16 criticize the intent or execution of the present
17 -- past or present programs, but to rather
18 illustrate the opportunity at hand to incorporate
19 additional means to broaden the industry's
20 marketing effort to help curb volatility.

21 As defined in the California Walnut
22 Board's strategic objective, retail sector growth

1 is the top priority, and the current California
2 Walnut Board objectives prioritize walnut demand
3 growth in the snack category.

4 Current Walnut Board marketing
5 programs are generic in nature and regulations
6 provide only for the support of traditional
7 forms, in-shell and shelled, but primarily raw
8 walnuts. Raw snack is an important component,
9 but to expand market development beyond raw is
10 the most critical consideration of the credit-
11 back authority as significant new consumption
12 growth will only happen via new products and
13 forms that will appeal to a larger consumer
14 audience.

15 Looking at the snack retail
16 environment, one must consider that most snacks
17 have evolved beyond their raw form. Why?
18 Because that's what the consumer desires. Milks,
19 spreads, butters, roasted, glazed, salted
20 walnuts, trail mixes, meat alternatives, et
21 cetera, are all significant demand sectors that
22 need greater walnut penetration so that our

1 industry is better able to reach a share of those
2 consumer dollars. The credit-back authority
3 provides the pathway.

4 Currently, handlers choosing to invest
5 in true, direct marketing and market development
6 of other forms of walnuts do so at their own
7 risk, yet the industry as a whole benefits from
8 their success.

9 Credit-back authority provides a fair
10 mechanism for all handlers to access additional
11 support for greater marketing efforts, product
12 innovation, and adoption of California Walnut
13 Board inspired concepts. Successful new products
14 developed and marketed by one company will create
15 further development of similar new products by
16 many others.

17 With a structured framework and
18 specific criteria, the credit-back authority has
19 accountability. Funds are only reimbursed after
20 a handler undertakes eligible market-building
21 activities.

22 It's important to point out that

1 handlers are the direct merchandisers, and will
2 be able to measure, and are responsible for
3 measuring, the success and effectiveness of spend
4 on a year-round basis with their customers. That
5 close working relationship and targeted marketing
6 is an advantage that a handler has over the
7 California Walnut Board.

8 As a grower and industry
9 representative, I believe it would be a giant
10 oversight for the industry to ignore this key
11 mechanism that targets an essential consumer
12 marketing opportunity and to not effect a well-
13 balanced industry marketing effort.

14 In conclusion, I fully support the
15 credit-back authority proposal and believe that
16 it would incent greater investment into industry-
17 wide marketing effort, be complementary to the
18 current programs, and work toward the common goal
19 desired by all walnut stakeholders.

20 Thank you. That concludes my
21 testimony.

22 JUDGE STROTHER: Okay. We've got 7

1 minutes left by my clock. I think we should see
2 if anyone has any questions.

3 Does USDA have any examination of this
4 witness?

5 MS. SCHMAEDICK: Melissa Schmaedick,
6 Your Honor. I have two questions.

7 JUDGE STROTHER: Your witness, counsel.

8 MS. SCHMAEDICK: Thank you.

9 BY MS. SCHMAEDICK:

10 Q Thank you, Mr. Heidman, for your
11 testimony.

12 My question has to do with your
13 familiarity with the proposals. Have you had an
14 opportunity to study the proposed amendments?

15 A Yes, I have.

16 Q Do you believe you understand them and
17 -- yeah, do you believe you understand them?

18 A Yes, I do. We've actually had a lot
19 of talk about this topic really going back to
20 2018 with a lot of our growers, looking at other
21 industries such as the almond industry and trying
22 to figure out how to adapt this program into the

1 walnut industry.

2 Q And so based on that, do you feel the
3 people that you represent, do they have a solid
4 understanding of the proposal?

5 A I believe there's a high number that
6 do.

7 Q And in general, is it your opinion
8 that people you represent are also in favor of
9 this proposal?

10 A Yes. By and large the major -- the
11 vast majority of folks really look at this as a
12 necessary step, you know, basically to provide
13 future security for the industry. So, they are
14 very much in favor of it.

15 Q Thank you, my last question. I said
16 two but here's -- here's the last one.

17 Number three is the stakeholders that
18 you represent -- are they primarily small
19 businesses, large businesses, or a mix?

20 A Truly it's a mix. But by and large,
21 my majority account would be small businesses.

22 Q All right. Thank you very much for

1 your testimony.

2 A Thank you.

3 JUDGE STROTHER: Any other questioners
4 from USDA?

5 MS. VAWTER: Your Honor, this is Terry
6 Vawter. I have a question.

7 JUDGE STROTHER: Ms. Vawter, your
8 witness.

9 BY MS. VAWTER:

10 Q Mr. Heidman, thank you for your
11 testimony.

12 Can you tell me a little bit about
13 Diamond Foods? It's a handling operation; is
14 that correct?

15 A That is correct. Diamond is a --
16 would be classified as a large walnut handler.

17 Q That's what I was getting to. Thank
18 you so much for your answer.

19 A Thank you.

20 JUDGE STROTHER: Is that it, Ms.
21 Vawter?

22 MS. VAWTER: It is, Your Honor.

1 JUDGE STROTHER: Anyone else from USDA?

2 Going once, going twice.

3 (No response.)

4 JUDGE STROTHER: Anyone from the
5 industry?

6 (No response.)

7 JUDGE STROTHER: You've got to unmute,
8 somebody's got to unmute the California Walnut
9 Board.

10 MS. CONNELLY: No, Your Honor, not from
11 myself. Anyone on the phone?

12 (No response.)

13 MS. CONNELLY: That's a no.

14 JUDGE STROTHER: Hearing none, anyone
15 else on the call via Zoom have any questions for
16 this witness?

17 MS. HOAGLAND: I don't see any, Your
18 Honor.

19 JUDGE STROTHER: Anyone -- thank you,
20 Ms. Hoagland.

21 Anyone on this, participating in this
22 hearing via telephone have any questions for this

1 witness?

2 (No response.)

3 JUDGE STROTHER: Looks like nothing
4 further.

5 I take it USDA has no follow-up on
6 itself.

7 All right. With that, I have an
8 exhibit marked for identification as 29, Eric
9 Heidman, Diamond Foods' testimony. Any
10 objections for the record?

11 (No response.)

12 JUDGE STROTHER: Hearing none --
13 hearing no objections, Exhibit 29 is admitted
14 into the record.

15 (Whereupon, the above-
16 referred to document,
17 previously marked as Exhibit
18 No. 29 for identification,
19 was received in evidence.)

20 You may step down from the virtual
21 witness stand, Mr. Heidman.

22 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 JUDGE STROTHER: Mr. Hatch, I can hear
3 you. You don't want to be heard I take it.

4 MR. HATCH: Your Honor, John MacTavish
5 is on the phone. He's spoken a couple of times.
6 Yes, he does have a request, and I was going to
7 put it in an email. But since everybody can hear,
8 he did ask for 10 minutes of the Judge's time.

9 So, if you would approve that, that's
10 Mr. MacTavish's request.

11 JUDGE STROTHER: Ten minutes of my time
12 to do what?

13 MR. HATCH: To speak on his view of the
14 industry, to put it in my words.

15 JUDGE STROTHER: Well, Mr. MacTavish
16 has the opportunity to present testimony. It
17 sounds like that's what he's asking to do.

18 MR. HATCH: Exactly right.

19 JUDGE STROTHER: Well, okay. I'll allow
20 Mr. MacTavish to present testimony. And we'll
21 put him at the end of the list of witnesses.

22 MR. HATCH: Correct. And that's what

1 I've mentioned to him a couple of times.

2 Mr. MacTavish, if you'd like to give
3 testimony, we are going to have one person
4 testifying tomorrow. It will probably be a couple
5 -- it might be as long as an hour, maybe a little
6 bit longer. You are welcome to give testimony
7 tomorrow.

8 Since we've not requested documents
9 from you, it will give you time to address the
10 Court.

11 MR. HATCH: Let me convey, let me
12 convey that. Okay, let me convey that to the
13 Judge then.

14 Your Honor, Mr. MacTavish would prefer
15 to do it off the record.

16 JUDGE STROTHER: There is no off the
17 record.

18 MR. HATCH: Understood.

19 There is no off the record.

20 MS. CHILUKURI: And, Your Honor, if
21 there's time at issue, I'm sure we could
22 potentially take Mr. -- if, you know, California

1 Walnut Board's open to it he could proceed first,
2 or we could accommodate his timing, depending on
3 what you and the proponent would like.

4 JUDGE STROTHER: Yes. Thanks, Ms.
5 Chilukuri.

6 What's the potential witness, Mr.
7 Hatch?

8 MR. HATCH: He remains steadfast in
9 providing information off the record to share his
10 view on how the industry, quote, really operates.
11 But he does not want to go on the record. So, we
12 signed off on our conversation.

13 JUDGE STROTHER: Well, I don't know
14 whether he's still listening to us; he can change
15 his mind in the morning, but the purpose of this
16 hearing is to develop a record on which USDA,
17 United States Department of Agriculture can make
18 a decision. There's no use for putting -- it
19 would be improper for information to come just to
20 me.

21 If it came just to me, it wouldn't go
22 any further. I have no means of sending that

1 information on to anyone else unless it's sworn
2 testimony.

3 I would suggest that this potential
4 witness simply go ahead and come in and talk on
5 the record. I'm not sure why the desire to be off
6 the record. By doing it off the record it means
7 that that testimony will not enter into the
8 USDA's consideration of the issues in this
9 proceeding.

10 So, we could perhaps take this up on
11 the morning again. But as of right now we will
12 not add Mr. MacTavish to the list of witnesses.

13 Again, encourage anyone that's got
14 anything to say to come forward and put it into
15 the record.

16 Okay. My suggestion is we'll
17 reconvene consistent with the corrected notice of
18 the hearing at 8:00 a.m. Pacific Time tomorrow
19 morning. And I think don't we have two witnesses,
20 Ms. Connelly and Ms. Donoho? Okay, very well,
21 we'll do that.

22 And when we get to it, on a proposed

1 post-hearing schedule, in the meantime that would
2 be good. But we'll take that up tomorrow, too.

3 I thought this handled very well. I'm
4 impressed with all the work everyone put into
5 this and grateful to everybody here.

6 Mr. Hearing Recorder, everything good
7 with you?

8 COURT REPORTER: Yes, Your Honor. I
9 have a couple questions once we go off the
10 record, if that's okay.

11 JUDGE STROTHER: Anyone have any
12 objection to that being off the record?

13 (No response.)

14 JUDGE STROTHER: Okay. With that, we
15 will recess until tomorrow morning at 8:00 a.m.
16 Pacific Time.

17 Off the record.

18 (Whereupon, the above-entitled matter
19 went off the record at 8:03 p.m. Eastern Time.)
20
21
22

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This is to certify that the foregoing transcript


In the matter of: Walnuts Grown in California
Amendment to Marketing Order No. 984

Before: USDA

Date: 04-20-20

Place: teleconference

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