

# UNITED STATES DEPARTMENT OF AGRICULTURE

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

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 WALNUTS GROWN IN CALIFORNIA )

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

Wednesday  
 April 20, 2022

The parties met remotely, pursuant to the notice,  
 at 11:05 a.m.

BEFORE: HONORABLE CHANNING D. STROTHER  
 Chief Administrative Law Judge

APPEARANCES:

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

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

On Behalf of the California Walnut Board:

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

Also Present:

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

C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>For the California Walnut Board:</u>					
Rachel Goodhue	283	286	--	--	--
Heather Donoho	327	332	--	--	--

E X H I B I T S

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
16	314	314
16A	363	363
18	357	357
19	357	357

P R O C E E D I N G S

(11:05 a.m.)

1  
2  
3 CHIEF JUDGE STROTHER: Welcome everybody back to  
4 the second day of this hearing. I don't think I need to go  
5 through the docket numbers and all. It'll be on the front  
6 page of the transcript, I'm sure. I don't know whether we  
7 have any housekeeping -- does anyone have any housekeeping  
8 business to -- to take care of before we get started with  
9 our first witness which should be Professor Goodhue, I  
10 think? We could talk about the briefings. I don't want to  
11 -- progress of the briefing schedule, transcript  
12 corrections and all, but I think we can probably save that  
13 until after we get through our witnesses today which I  
14 think we probably -- seems to me like we should be able to  
15 get through the witnesses maybe even before lunch, who  
16 knows. Any -- anyone have any -- anything they want to  
17 start with before we call Professor Goodhue to the stage --  
18 to the stand rather, not the stage?

19 Okay. Very well, Professor Goodhue, please take  
20 the virtual stand. Are you there? I can't hear.

21 MS. GOODHUE: Yes, Your Honor.

22 CHIEF JUDGE STROTHER: Oh, thank you.

23 //

24 //

25 //

1                   Whereupon,

2                                   RACHEL GOODHUE

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

5                   CHIEF JUDGE STROTHER: Thank you. All right.  
6 This -- this is another witness sponsored by the  
7 California Walnuts Board if I recall. It's like putting  
8 all my papers neatly in a notebook, not expanding, but I  
9 guess -- I'm guessing we will follow the usual procedure  
10 we have which is simply to have the witness like give her  
11 statement as testimony without direct examination  
12 questions. So Professor Goodhue, the floor is yours.

13                                   DIRECT TESTIMONY

14                   DR. GOODHUE: Thank you, Your Honor. So good  
15 morning everyone. My name is Rachel Goodhue, R-A-C-H-E-L,  
16 Goodhue, G-O-O-D-H-U-E. I am a professor and Department  
17 chair in the Department of Agricultural and Resource  
18 Economics at the University of California, Davis. I have  
19 worked there since 1998 after earning my Ph.D. in  
20 agricultural and resource economics at the University of  
21 California, Berkeley.

22                   I would like now to provide an address. I will  
23 use the address of the California Walnut Board which is  
24 101 Parkshore Drive, Suite 250, Folsom, California 95630.  
25 I would also like to, if I may, Your Honor, so I'll pause

1 after I ask it, I'd also like to add my direct  
2 affiliations to the -- the California Marketing, I'm  
3 sorry, California Walnut Commission and the California  
4 Walnut Board at this time if I may.

5 CHIEF JUDGE STROTHER: Of course, Doctor.

6 DR. GOODHUE: So I'm the public member and chair  
7 of the California Walnut Board and the public member of  
8 the California Walnut Commission. I'm also chair of the  
9 board's marketing order revision committee and chair of  
10 the California Walnut Board and California Walnut  
11 Commission, joint committee on diversity. And today, I'm  
12 testifying to the economic effects of the proposed  
13 changes.

14 So in terms -- so in terms of direct cause and  
15 as we heard yesterday, the inspection process costs the  
16 industry in excess of \$6 million annually in direct costs  
17 based on the most recent marketing year of 2020/2021. The  
18 total cost is based on a 7,800 -- 7,000 -- sorry, 700,000  
19 -- 780,000 -- 83,500 tons for the 2020 crop based on an  
20 estimate from the Dried Fruit Association of California of  
21 the DFA inspection costs at \$6,033,577, and the Dried  
22 Fruit Association is an California Walnut Board's  
23 inspection agency of record.

24 So this total cost was obtained as follows:  
25 obtaining an average cost per ton from the DFA, and then



1 multiplying that cost by the total tons. So the variable  
2 as you can see in the small table, the average cost per  
3 ton is \$7.70, the tons as I just said was 783,500, and so  
4 then that puts inspection cost a shade over \$6 million.

5 So then to reflect the impacts by product type  
6 and we heard a lot about in-shell versus shelled  
7 yesterday, this total cost is separated into the cost for  
8 in-shell walnuts and the cost for shelled walnuts by  
9 multiplying the total cost by the percentage of the crops  
10 sold in each form in 2020. Forty-two percent of sales  
11 were in-shell and 58% of sales were shelled. And so then  
12 separating that out, it's about \$2 million -- for the in-  
13 shelled cost estimate in 2020, \$2,007,327 and the shelled  
14 cost estimate in 2020 was \$4,026,250. So then the total  
15 cost estimate again is a bit over \$6 million --  
16 \$6,033,577.

17 The other component that I wish to mention  
18 briefly is indirect cost. Handler will benefit from the  
19 reduced redundancies for operational processes, the  
20 associated costs, and administration burden. The proposed  
21 assessment mechanism is a process that handlers currently  
22 undergo for the California Walnut Commission which does  
23 provide for additional efficiency for handlers. Producers  
24 would benefit through cost savings, increased deficiencies  
25 that may result in higher grower returns.

1           Consumers already benefit from quality  
2 California walnuts that surpass grade standard.  
3 Therefore, no negative quality implications will ensue.  
4 However, consumers may benefit through improved pricing  
5 resulting from reduced handler cost of goods. That is the  
6 end of my verbal testimony.

7           CHIEF JUDGE STROTHER: Okay. Thank you, Doctor.  
8 Any examination in the form of further direct, really I  
9 guess, by the California Walnuts Board?

10          MS. DONOHO: No.

11          CHIEF JUDGE STROTHER: Hearing no request, I  
12 didn't quite catch that one. It sounded like a no. All  
13 right. Does USDA have any questions for this witness?

14          MS. PANKEY: Yes, Your Honor, this is Christy  
15 Pankey and I will be examining Ms. Goodhue.

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

17                                   CROSS EXAMINATION

18          BY MS. PANKEY:

19           Q     Okay. Good morning, Ms. Goodhue. I'll be  
20 asking you some questions about your participation on the  
21 California Walnut Board. You said in your testimony that  
22 you are the chair person of the board. Could you briefly  
23 explain your roles and duties as the chairperson?

24           A     So my roles and duties as chairperson are that I  
25 preside over the meetings and as part of the board, I'm

1 responsible for reviewing the proposed policies, reviewing  
2 the items that come in on the agenda, for example, the  
3 crop projections that come in from the California  
4 Department of Food & Agriculture, then I guess that I -- I  
5 will reiterate that I am the public member, which is that  
6 I have no interest in the walnut industry, so I assess  
7 these policies from a broader public interest perspective  
8 and the implications, if any, for parties in addition to  
9 the walnut industry. So the difference between a board  
10 really and any other member is I would say managing the  
11 meetings, that I have the same responsibility for  
12 reviewing all materials and assessing their  
13 appropriateness.

14 Q Okay. Thank you. Could you tell me how long  
15 you've served as a chairperson for the board?

16 A Since 2017.

17 Q Okay. Thank you. You said you're also the  
18 chair for the marketing order and revision committee, is  
19 that correct?

20 A That is correct.

21 Q Is that the only subcommittee that you  
22 participate on?

23 A No, I also participate on the -- the board and  
24 the commission of a joint committee on diversity, so I'm  
25 the chair of that.

1 Q Okay. Thank you. Could you describe for us the  
2 discussions that were had about the proposed amendments on  
3 the marketing order revision committee?

4 A I can discuss those based on I believe -- yes, I  
5 missed a discussion so I'm just referencing whether that  
6 was a board discussion or a marketing order committee --  
7 revision committee. So the board charged the marketing  
8 order revision committee with examining ways of  
9 implementing the recommendations of the grades and  
10 standards committee. We heard about that yesterday. So  
11 the board -- I'm sorry, the committee met and discussed  
12 possibilities for implementing that and what it came down  
13 to was really separating out the proposed assessment, how  
14 that was going to be treated, and the proposed changes  
15 that are the subject of our discussion today.

16 And then the other changes which are eliminating  
17 the standards of revising what it means to -- sorry,  
18 eliminating the standards and the -- and removing the  
19 volume control, and the implications of that in terms of  
20 the technical changes that would be included.

21 Q Okay. Thank you. So just to clarify, you said  
22 the marketing order and revision committee was -- had to  
23 decide how the recommendations by the grades and standards  
24 committee would be implemented.

25 A More --

1 Q Yeah.

2 A -- more precisely, the board discussed that  
3 first. I was absent for one of those discussions.  
4 Charged the marketing order committee with preparing a  
5 formal version of the proposal which -- when I say formal,  
6 it still had to go back to the board, and then the  
7 marketing order committee delivered a product for the  
8 board to vote on so we were -- so just like any other  
9 committee, we weren't the deciding authority, but we  
10 developed the recommendation as charged by the board and  
11 then it was sent back to the board for vote.

12 Q Okay. And then the development of that  
13 recommendation, were there any outreach efforts that were  
14 conducted by the committee members?

15 A I did not personally conduct an outreach in part  
16 because of being a public member and the outreach efforts  
17 of which I'm aware for the overall process, I don't know  
18 the timing of them between the -- the specific meetings,  
19 but certainly there were emails, communications out to  
20 industry, and then there were discussions among industry  
21 members I was told. So, but again, as a public member, I  
22 wasn't part of the kinds of discussions that were  
23 described yesterday.

24 Q Okay. So in your opinion, do you believe that  
25 the members are the marketing order and revision committee

1 are reflective of the industry?

2 A To the best of my knowledge, yes, they are.

3 Q Okay. Thank you. I'll be asking you  
4 questions about statements in your testimony here. So  
5 could you explain as a professor in research --  
6 agriculture research and economics, could you explain the  
7 economic challenges that may have impacted the California  
8 walnut industry over the years that could have contributed  
9 to the need to modernize the marketing order?

10 A So there's two channels of discussion for me on  
11 that. The most direct one is that supply's been  
12 increasing, we've seen the change in acreage from Mr.  
13 Poindexter's presentation yesterday. So with increasing  
14 supplies, then all else equal price will fall and even  
15 with demand expanding efforts, promotion advertising which  
16 is a major function of the board, then that effect on the  
17 observed price will depend on the elasticity of supply and  
18 demand, which is how much the quantity supplied would  
19 actually change in price or sometimes people like to talk  
20 about price flexibility which is how much the price  
21 changes in response to a change in quantity and those are  
22 just the reciprocals of each other. And so that's --  
23 that's one reason. If promotion efforts are not  
24 sufficient to reduce an increase in supply, then you see a  
25 falling price and when you see a falling price and in

1 general what any efficient, competitive industry should be  
2 doing is -- should be doing is to reduce costs to the  
3 extent possible. If you don't reduce costs to what's  
4 needed, you're operating inefficiently.

5 And then the other thing that's effected under a  
6 -- more broadly to what we're seeing and I, you know, in  
7 agriculture overall is we're seeing more specific  
8 standards, more specific expectations. Basically, what's  
9 happening is rather than having broad commodities, we're  
10 seeing the marketing chain -- we have our food chain  
11 producing specialized products to fit specific consumer  
12 demands and so when you do that, you're looking at these  
13 different sets of quality attributes and again as we heard  
14 yesterday from the -- the handlers primarily, those  
15 specific attributes as communicated back to them from  
16 their buyers, you know, the retailers and manufacturers,  
17 you know, they need specific quality attributes and then  
18 functionally what's happened is those attributes are both  
19 -- were specialized, we've seen, we've heard that we have  
20 also new means of measuring quality attributes, and so  
21 then we have grading standards in this instance that are  
22 based on a commodity and the industry like many others is  
23 involving to set a specialized products rather than a  
24 single-commodity product that all handlers deliver to  
25 retailers and manufacturers, but again that's a tendency

1 that would or process in evolution that we've seen in  
2 other commodities as well. So that's -- that's a broad  
3 challenge that I tried to place in the context of the  
4 walnut industry and in addition to the specific supply  
5 increase that we have observed in walnuts.

6 Q Okay. Thank you. So in your opinion, would you  
7 say the proposed amendments to modernize the order would  
8 make it more efficient and meet the current industry  
9 needs?

10 A So it will make the -- the order itself serves  
11 the industry so it's not a question of if become more  
12 efficient, the question is modernizing the marketing order  
13 in this way will enable industry to be more efficient by  
14 reducing their cost.

15 Q Thank you. Okay. So I have a question on a  
16 slide number 18 in Poindexter's testimony in regards to  
17 the farm gate value. Do you have an opinion on the cause  
18 of fluctuations of the farm gate value that occurred  
19 between 2015 and 2020?

20 A So there's a number of factors that influence  
21 the realized farm gate price which influences the realized  
22 farm gate revenue, so in terms of the price influencing  
23 it, my opinion on the largest factor is competition from  
24 other countries and Mr. Poindexter, thank you, on -- on  
25 your way to slide 18 if you could pause there for a



1 second, Mr. Hatch.

2 So what we've seen -- what we can see here is  
3 that there are several major producers trying to be the  
4 most important one, and so changes in first the acreage  
5 from these competing producers over time, that will impact  
6 on trend what happens to the price of California walnuts,  
7 and then move ahead to slide 18, Mr. Hatch, that was just  
8 a little bit of serendipity.

9 So then the other -- so the other reason for  
10 fluctuations besides the impact on price, which happens  
11 from both changes in the acreage and other countries, and  
12 then the other thing that happens in other countries and  
13 in California is you see variations in yield. Okay? And  
14 as yield varies, then you'll see realized price vary so we  
15 have variations in yield both in California and in those  
16 competing countries, that impacts the market price. We  
17 may see fluctuations in demand which again interact with  
18 fluctuations in supply. I'm not aware of any annual  
19 fluctuations in demand that would cause that, but  
20 certainly the supply factors alone I would expect to see  
21 some variation because as you have international  
22 competition, then you have more and more different  
23 supplies from around the world influencing the market  
24 price.

25 Q Okay. Thank you. Would you say that the board

1 had many discussions on how they might be able to manage  
2 the effects that you just described?

3 A I would say that at most if not all meetings  
4 there's been comments on how to manage I would say more  
5 broadly the fluctuation or sorry, the -- manage the  
6 impacts of the trend because these fluctuations in part  
7 are natural factors. We can't change the weather, for  
8 example, so that influences what happens with yields which  
9 in turn we can't influence the weather in China and that  
10 influences their yields and the supply from there. So I  
11 would say there's questions about the -- how to influence  
12 the trend. Advertising and promotion can do that  
13 certainly. That's -- that's the whole purpose of it, is  
14 to shift out demand to address the shipped out and  
15 supplied, but again, you can't control the weather and I  
16 consider that an important factor.

17 Q Okay. Thank you. In your testimony, you state  
18 the 2020 crop that there was 783,500 tons inspected. Does  
19 that number include both domestic and international crop  
20 of walnuts that were inspected

21 A No, it does not; it's domestic.

22 Q Domestic only?

23 A Correct.

24 Q Okay. Thank you. So does the \$6 million  
25 estimated cost, is that only for domestic inspections?

1           A     That is correct.

2           Q     Okay.  So if -- so currently the provisions on  
3 the orders stipulate handlers must receive inspections.  
4 If the inspection requirement is eliminated, would you say  
5 that the industry could potentially save \$6 million  
6 annually?

7           A     Yes.

8           Q     And do you think this is a fair representation  
9 of cost savings?

10          A     Yes.

11          Q     In your opinion, do you believe there are more -  
12 - over the years, do you believe there are more or less --  
13 more or less handlers in the industry and what may have  
14 affected that?

15          A     I've been on the board and commissions since  
16 2017 so I'm not aware of longer-term trends.  What I've  
17 heard, what I've been told, my sense of things is there  
18 may have been a reduction.  I don't know how large it is  
19 and I don't know who left the industry, but it's also  
20 something -- consolidation is some -- and capturing the  
21 economy as a scale is something we seek throughout  
22 agriculture so based on that general knowledge, I would  
23 predict it.

24          Q     Okay.  So in an industry that -- where is mostly  
25 small and some large handlers, would you say the \$6

1 million cost estimate that you identified in your  
2 testimony is proportionately distributed across all  
3 handlers of all sizes?

4 A To the extent that the cost of inspection are on  
5 a variable basis so that they're per unit, yes, it should  
6 be identical.

7 Q Thank you. Could you explain why the cost  
8 savings for shelled is almost double that of in-shell?

9 A It's because basic -- it's basically what we  
10 heard about yesterday. I'm sorry, it's basically because  
11 first off, I guess I should put my reading glasses on. So  
12 first off, it's because of the percentage of sales, but  
13 that's going to increase -- thank you, Mr. Hatch -- that's  
14 going to increase it slightly by about a quarter and then  
15 the other question is when you're looking at doing it on  
16 the -- the weight of the actual walnut meat, then you're  
17 going to also see a difference so those are the two  
18 possibilities or, sorry, factors.

19 Q Okay. Thank you. In your testimony, you  
20 indicate that producers, not just handlers, will benefit.  
21 Can you explain how walnut producers also benefit from a  
22 reduction in costs to handlers given the proposal?

23 A So, yes, and I'm going to need to expand it to  
24 consumers and then retailers and manufacturers to answer  
25 it, is that okay?

1 Q Absolutely.

2 A All right. So I mentioned earlier that in a  
3 single market, the realized price is going to depend on,  
4 you know, quantity on supply and demand and so when we  
5 look at something like a reduction cost, you can see also  
6 I mention efficiencies here, then what we have is we have  
7 a set of broader-plate related markets, and then there's  
8 \$6 million in savings that economic theory predicts will  
9 be distributed across the chain, and the factors that are  
10 going to influence that are the quantities and then the  
11 elasticities of supply and demand, or again the adverse  
12 price flexibilities for the buyer and seller in each  
13 market and so that \$6 million would be distributed across  
14 the following parties which is growers, handlers, then  
15 retailers and manufacturers and -- and consumers. Then so  
16 besides the elasticities of supply and demand, if there's  
17 any market tower within the chain, that will also  
18 influence the realized price and hence how this \$6 million  
19 in savings will be distributed.

20 Q Okay. Thank you. Can you provide additional  
21 details in your professional opinion about the benefits  
22 associated with the proposed amendments -- oh, you kind of  
23 just answered it. Sorry, you just answered that with the  
24 consumers so we'll skip that question.

25 To your knowledge, please explain how mandatory

1 inspections reduce the administrative burden for the board  
2 and handlers.

3 A I'm -- I'm sorry, could you repeat that?  
4 Because I -- I --

5 Q To your -- to your knowledge, please explain how  
6 the elimination of mandatory inspections will reduce the  
7 administrative burden from the board and handlers?

8 A Because I didn't catch the elimination. So  
9 basically what we have with this mandatory inspection is -  
10 - then there's also mandatory inspection for the  
11 California Walnut Commission and there are two different  
12 bases for those two inspections. Okay? So that means  
13 that handlers are tracking two -- or I should say  
14 reporting two kinds of measurements and then so then they  
15 would only have to do one and then for the staff, they'll  
16 only be managing reporting based on one measure. So  
17 that's -- that's a reduction in cost -- administrative  
18 cost.

19 Q Okay. Thank you. I'll begin asking you  
20 questions about the new mechanism as mentioned in your  
21 testimony. Can you explain how this proposed new  
22 assessment mechanism is the same or similar to the  
23 California Walnut Commission process?

24 A It's because it's on the same volume unit so  
25 that we -- so again I basically that's what I relied on to

1 discuss the change in administrative costs. So then  
2 rather than -- so then there's just the same basis so the  
3 assessment is based on the same volume issue?

4 Q And you're referring to the in-shell? Is that  
5 what you're referring to?

6 A I'm referring to how volume is calculated and  
7 again there's going to be a factor that allows you to  
8 assess both in-shell and shelled walnuts and I am not  
9 personally aware of that factor off the top of my head.

10 Q Okay. Would you say that this would provide  
11 additional efficiencies for handlers? This new mechanism?

12 A Again, I would think so because of the need to  
13 only be tracking one measure. It will also provide an  
14 additional kind of efficiency in terms of all industry  
15 members being able to talk easily about the assessments  
16 from the two bodies --

17 Q Okay.

18 A -- the board and the commission.

19 Q Okay. Thank you. To your -- to your knowledge,  
20 how would this process affect the administrative brand for  
21 handlers?

22 A So again, they will be only addressing one  
23 measure of volume for the assessment basis.

24 Q Okay. Is there a similar -- well, and they're  
25 filling out a form, the acquisition report, correct? For

1 the new assessment mechanism, is that correct?

2 A Correct, it's the one -- yes.

3 Q Okay. Finally, I have some basic questions on  
4 some of the technological advancements to improve quality  
5 made by the industry. If you're not comfortable with  
6 answering any of these questions, please let me know. Can  
7 you describe some of the technological advancements that  
8 have been made by industry?

9 A As an economist, I'm not comfortable addressing  
10 technological questions. I'm not a scientist, I'm not a  
11 handler, I'm not a grower.

12 MS. PANKEY: Okay. Thank you, Ms. Goodhue.  
13 Your Honor, I have no further questions.

14 MS. CHILUKURI: Your Honor, this is Rupa  
15 Chilukuri and I have one or two questions for Ms. Goodhue.

16 BY MS. CHILUKURI:

17 Q So, Ms. Goodhue, in your testimony at the end,  
18 you talked about benefits to consumers and I just wanted  
19 to discuss that briefly. So consumers already benefit  
20 from quality California walnuts since they pass grade  
21 standard, therefore, no negative quality implications were  
22 ensued. Can you talk a little bit more about that in the  
23 sense that if substandard walnuts are eliminated, and I  
24 think there's been testimony before about market forces,  
25 but what is the assurance that a consumer won't receive



1 substandard walnuts now if mandatory eliminations are  
2 removed or eliminated?

3 A So what we see in this market again as in other  
4 agricultural markets is there's specific exhortations for  
5 the quality of product that buyers are willing to purchase  
6 and the -- given what buyers want is currently above the  
7 USDA quality standards, then I would not expect to see  
8 that in particular -- that in particularly substandard  
9 walnuts then being sold to those buyers and on to  
10 consumers, and the reason why is again, something we heard  
11 yesterday which is buyers are not purchasing product that  
12 meets the USD -- USDA minimum standard, right? And so if  
13 no one is hitting that bound, if no one's equilibrium  
14 quality, this out of bound, I would not expect, I would  
15 not predict that with the removal of the standards any  
16 buyer would move their quality expectation below that  
17 standard. So again if there's no buyer who is at that  
18 standard and that's what they want to purchase, then you  
19 would not expect eliminating that standard to impact  
20 quality requirements that are already exceeding it. Do  
21 you want -- do you want me to reword that? It was -- I  
22 got a bit technical so I didn't --

23 Q If you'd like to reword it, feel free, but --

24 A Oh, I mean I'm comfortable with it. I just  
25 wanted to make sure that you were --

1           Q     Yes, thank you. I had another question  
2 expanding on what Ms. Pankey had asked you about the  
3 California Walnut Commission. Is the -- is it just that  
4 in terms of paralleling this new proposal you said that it  
5 would be the same volume units. Is it also that the  
6 California Walnut Commission assesses based on what  
7 handlers receive?

8           A     So if -- my Internet froze so I'm afraid you're  
9 going to have to recite that question from the beginning.

10          Q     Sure. So I just wanted to talk a little bit  
11 more about the California Walnut Commission. You had  
12 mentioned that the proposed assessment mechanism is a  
13 process that handlers currently undergo for the California  
14 Walnut Commission so I'd appreciate any more information  
15 you have to offer on what -- what the assessment mechanism  
16 is at the California Walnut Commission. How that will --  
17 how that parallels what the proposal is as it relates to  
18 the CDW and this marketing order.

19          A     Okay. So I think I have described what I know  
20 about it in the answers to my -- my previous -- in the  
21 answers to previous questions. So no additional  
22 information to offer.

23               MS. CHILUKURI: Okay. Okay. Thank you. I have  
24 no further questions.

25               DR. HINMAN: Your Honor, Don Hinman for USDA.

1 CHIEF JUDGE STROTHER: Your witness, Mr. Hinman.

2 BY DR. HINMAN:

3 Q Good morning, Dr. Goodhue. Thank you for your  
4 testimony today. I want to followup again on what you  
5 said the relations on, you know, demand and elasticity.  
6 Would you say then that the price elasticity of demand is  
7 elastic?

8 A I would say that the price elasticity of demand  
9 is fairly elastic. I do not have the value in front of me  
10 or off the top of my head and I should have.

11 Q Could you --

12 A I --

13 Q It's all right. I don't need a number, but I  
14 mean just would you say in general that if all else being  
15 equal, if the quantity went up by a certain percent, the  
16 price would decline by a larger percent? Is that a fair  
17 statement?

18 A It -- yes.

19 Q Okay. And you also mentioned demand -- and I  
20 wasn't sure I followed this entirely, but the choices in  
21 terms of the reduced -- the benefits from reduced cost you  
22 mentioned that that would be across various market  
23 participants there in retail and manufacturers based on --  
24 on the -- the various things included in market power.  
25 Can you expand a bit on that and how that price elasticity

1 of demand plays into all of that?

2 A Okay. So market power is when there is a buy --  
3 a buyer/seller we -- I mean most people have heard -- you  
4 read monopoly, you read less often about (tech glitch),  
5 and that's when the single -- there's a single buyer or  
6 seller and so they influence the market price by their  
7 decisions. Market power more broadly is when there's a  
8 group of buyers or sellers who are large enough by their  
9 decisions alone to influence the market price. I mention  
10 that in part because there's been a lot of literature and  
11 agriculture economics most recently about retailer and  
12 manufacturer market power in terms of buying the  
13 agriculture product and also against consumers. So again,  
14 it's -- when you think of -- or another way of thinking  
15 about it is when there is no market power, there's a  
16 sufficient number of buyers and sellers in the market that  
17 no one buyer or seller can influence the market price.

18 Q Okay. Thank you. So in the \$6 million is a  
19 good overall estimate of the benefits of -- of reduced  
20 cost from that, but you don't have any breakdown of that  
21 number, that's basically the overall six million, that's  
22 your representation -- that's the representation?

23 A Correct, because I would need to know supply and  
24 demand for the -- supply and demand elasticities for those  
25 various markets, growers, and handlers -- and handlers and

1       retailers/manufacturers --

2           Q     Okay.

3           A     -- and then to get technical, then all the  
4       marketing channels for which it goes through that stage to  
5       consumers so I would need to know a number of those and I  
6       would also need to estimate demand and supply  
7       elasticities.

8           Q     So is there -- we won't ask you to do that today  
9       -- limited time we have. Mr. Poindexter in one of his  
10      slides here mentioned about the number of handlers. It  
11      was -- it was 86 and I believe that that was the 2018 crop  
12      year or year that we're mentioning and do you believe that  
13      that 86 is still a representative number today? And if  
14      you have no way of knowing, that's fine. I just wanted to  
15      see --

16          A     I -- I --

17          Q     -- yeah, we just wanted -- we just want to put  
18      on the record the number of handlers and -- and is that a  
19      reasonable representation today?

20          A     I -- I think I will not comment on that. How --  
21      sorry, what year are you using as the base again?

22          Q     If -- if the -- the slide that Mr. Poindexter  
23      had just said for the 2018/19 marketing year if there is  
24      86 handlers, and he said 82% of those were small, meaning  
25      less than \$30 million per year. I just wanted to kind of

1 verify the fact is -- just in general, is that still a  
2 reasonable representation?

3 A Very roughly to the best of my knowledge, yes.

4 Q Okay.

5 A I've not received any information that suggests  
6 there's been a huge decline or increase.

7 Q Okay. That's fine. Thank you. Mr. Hatch, if  
8 you could put up the earlier testimony again. I have a  
9 question about the \$6 million computation. The 782,500  
10 tons, is that based on -- is it having receipts by the --  
11 by the board, was there an inspection number?

12 A So it's -- it's reported by the board. I can --  
13 I can pull the exact title of it. It was based on the 20  
14 -- the reported volume December 31st on 2020 --

15 Q Okay.

16 A -- and it excludes some exceptions for the  
17 directed consumer sales as shown in the original marketing  
18 order text.

19 Q Okay. Okay. So -- so and in, you know, when --  
20 when USDA published that 70 or 85,000, but that -- that  
21 directed consumer sales -- and would it account for some  
22 of that difference?

23 A That would account for the difference.

24 Q Okay. That's fine. So it's --

25 A There --

1 Q -- it's the board estimates, you know, which is  
2 useful for computing the amount inspected?

3 A Correct. It's -- it's rounded slightly for  
4 clarity as I suspect USDA's number is so it takes the  
5 1,500 off of the USDA's estimate to account for those  
6 directed consumer sales. I think that, you know, again,  
7 it's rounded a bit.

8 Q That's fine. It's -- it's -- yeah. Again, for  
9 the 770 average cost per ton, again, you said it's a  
10 small, medium, and large average. Can you say a little  
11 bit more of how you got that figure, the 770?

12 A So the -- the 770 is, as you said, an average  
13 based on small, medium, and large handlers and so  
14 assessing that cost and taking an average of that cost as,  
15 you know, and as we heard yesterday, there's a rough  
16 definition of small, medium, and large, so this is a  
17 simple average of the numbers that were derived for the  
18 three classes of small, medium, and large.

19 Q Do you think, you know, this computation gives  
20 you a good representation of benefits across all sizes of  
21 handlers?

22 A Yes.

23 Q Okay. Thank you. And then just to make a --  
24 kind of, let's see, as far as the computation, I'll ask  
25 you if you're comfortable, we're going to, you know,

1 probably ask something very much like this in the -- in  
2 the rule when we publish it -- this is a very small  
3 change, but multiply 770 times 782,500, it actually ends  
4 up rounding slightly different. Would that be a  
5 reasonable representation as well? Just say when you're  
6 using a rounded figure, it's going to be slightly smaller.  
7 You're comfortable with that number?

8 A I am comfortable with that number when you  
9 consider the rounding of a few times which is about how  
10 much rounding we have here. It's going to be a small  
11 share besides just a small absolute value.

12 Q Okay. Sounds good. Thank you. And -- and then  
13 the -- on that you show the percentages and you -- you  
14 know, so if you just look at that, I mean it's roughly \$6  
15 million and you divide it, you know, \$2 million in-shell  
16 and \$4 shelled cost estimate which each is about, you  
17 know, 33% and 66% of \$6 million, so how does that relate  
18 to the 42%?

19 A So it relates in -- so again there's a question  
20 -- there's a difference in weight and there's a question  
21 of the difference in the percentage of sales by product  
22 form.

23 Q So there's no -- is there any way we can infer -  
24 - is there any fraction we can use to, I mean, you know,  
25 it -- like somebody who wasn't familiar with the number



1 would say well 6.03, 35, you know 42%, 48% of that -- 42%  
2 of that isn't 2.9, not 2.0. So how would one -- how would  
3 -- particularly when you put this on the table the numbers  
4 to compute that what -- how did you get from \$6 million to  
5 2.0 and 4.0? Can you give us any -- approximate  
6 calculation to arrive at that?

7 A So I, you know, my preference is I'm going to  
8 describe it verbally and this is something I want to be  
9 precise about which means I'd like to submit it later if  
10 that's permissible, because otherwise you're going to  
11 watch me looking things up. So what you would want to add  
12 to the table if you made those -- made that text into a  
13 table with those in-shell cost estimates, it would be  
14 percentage of sales, then it would be a conversion factor  
15 for weight and so forth. I would probably choose shelled  
16 to be -- to be a factor of one and then I would choose in-  
17 shell to be a different factor. So I would put -- yeah,  
18 so I'd have the percentage of sales as one line and then I  
19 would have the conversion factor as a second line, then I  
20 would have the net percentage as a third line, then as a  
21 fourth line, I would have those cost estimates for in-  
22 shell and shelled.

23 DR. HINMAN: Sounds good.

24 CHIEF JUDGE STROTHER: Can I stop for a minute -  
25 - stop you all for a minute here? There's a reference to

1 submitting something later? I mean I don't think we  
2 really have a mechanism for submitting anything into the  
3 record after the close of this hearing. I mean we could  
4 try to create such a mechanism, but I -- I don't know. I  
5 mean I'm just throwing that out there. I think my  
6 preference would be -- well, it depends on how important  
7 it is and what the -- what the participants want. Is this  
8 something important enough, Mr. Hinman, that we want to  
9 set up a mechanism to submit something after the witness  
10 has left the stand?

11 MS. CHILUKURI: Your Honor, if I could interject  
12 before --

13 CHIEF JUDGE STROTHER: Yes, Counsel.

14 MS. CHILUKURI: -- Mr. Hinman speaks? Rupa  
15 Chilukuri. Yeah, I agree, I don't know that there's a  
16 mechanism in place to allow that. The whole point of this  
17 is that everything be on the record. We have an  
18 opportunity to ask questions of Ms. Goodhue as well so  
19 that would -- if she submits something after the fact, we  
20 wouldn't have that opportunity. If we were to perhaps  
21 have her work on that document today and submit during --  
22 during today and then would have an opportunity to ask  
23 questions, perhaps that could be something we could do  
24 instead, but I don't think there's any opportunity to  
25 submit something after the record is closed.

1 CHIEF JUDGE STROTHER: Yeah, I think that's a  
2 good suggestion and we can always call the witness back to  
3 the stand if necessary. We could get whatever submitted  
4 up on the web page associated with this case. By the way,  
5 I -- so let's -- is that agreeable to everyone? Do we  
6 give that a shot?

7 DR. HINMAN: That sounds good to me as well.  
8 Dr. Goodhue, would that be reasonable, Doctor?

9 DR. GOODHUE: Absolutely, Dr. Hinman. That's --  
10 that's perfectly fine.

11 DR. HINMAN: It's a -- it's a -- it's a very --  
12 I just -- so, Your Honor, I just want to make a comment,  
13 this is -- this is an unusual computation and -- and if  
14 the doctor would be willing to do that, I think that would  
15 help the record. Thank you.

16 CHIEF JUDGE STROTHER: Sure, we've got the time.  
17 By the way, Mr. Poindexter had his hand raised.

18 MR. POINDEXTER: Yes, Your Honor.

19 CHIEF JUDGE STROTHER: Mr. Poindexter, did you  
20 want something further?

21 MR. POINDEXTER: Yes, I have the -- there was an  
22 ad -- question on the current number of handlers today. I  
23 do have that number if that is something I can -- can give  
24 you or if that has to come from Rachel. I don't know.

25 CHIEF JUDGE STROTHER: I don't know.

1 MR. POINDEXTER: It's -- it's -- it's only  
2 changed by one. It's 85 as of March 1st instead of 86  
3 that was on the slide as of whenever that presentation was  
4 made.

5 CHIEF JUDGE STROTHER: Okay. Dr. Hinman, does  
6 that suit you?

7 DR. HINMAN: Yes, that's fine.

8 CHIEF JUDGE STROTHER: Okay.

9 MR. POINDEXTER: Okay.

10 CHIEF JUDGE STROTHER: Professor, do you adopt  
11 that number?

12 DR. GOODHUE: Absolutely, Your Honor.

13 CHIEF JUDGE STROTHER: Very good. All right.  
14 We got that number in the record then. Okay. Thank you  
15 and please continue with examination.

16 DR. HINMAN: Actually, now with that discussion  
17 of the sort of, you know, computation of details there,  
18 that -- those -- that concludes my questions, Your Honor.  
19 Thank you.

20 CHIEF JUDGE STROTHER: Very well. Anyone else  
21 from USDA? Anyone from the Zoom participation at large  
22 have any questions for this witness? Hearing no requests,  
23 anyone on the telephone have any questions for this  
24 witness? Very well. Okay. Professor Goodhue, you may  
25 step down from the virtual stand and --

1 DR. GOODHUE: Okay.

2 CHIEF JUDGE STROTHER: -- when we get the  
3 aforementioned document from you, we can figure out what  
4 to do about that, whether we need to recall you or  
5 whatever at that time, but for right now, you may step  
6 down.

7 DR. GOODHUE: So a clarifying question on that,  
8 Your Honor.

9 CHIEF JUDGE STROTHER: Yes.

10 DR. GOODHUE: To whom -- to whom do I send this  
11 number or to whom do I inform -- to who -- who do I inform  
12 when I have it?

13 CHIEF JUDGE STROTHER: What do you think? Dr.  
14 Hinman, it was your question. So -- so, Mr. Hatch, do you  
15 think? Or I don't know that we have an email service list  
16 for everybody.

17 MR. HATCH: This is Andy Hatch. Similar to  
18 individuals who can submit testimony or exhibits during  
19 the hearing, I'd suggest possibly emailing any documents  
20 to LaShawn Gott Williams [phonetic] at usda.gov --  
21 [lashawngottwilliams@usda.gov](mailto:lashawngottwilliams@usda.gov).

22 DR. GOODHUE: All right.

23 MR. HATCH: She is on this call today like she  
24 was yesterday. We could process that document, get it to  
25 me, and I can show it on the screen.

1 DR. GOODHUE: Great. Thank you.

2 CHIEF JUDGE STROTHER: Thank you. If I -- don't  
3 let me miss this at the end of the day.

4 DR. HINMAN: Thank you -- thank you, Your Honor.

5 CHIEF JUDGE STROTHER: All right. Very well.  
6 Okay.

7 We've been going for an hour. As -- Mr. Jones,  
8 are you doing okay as our hearing reporter? Do you need  
9 to -- I'm sorry, we have -- do need to put Exhibit 16 --  
10 offer Exhibit 16 into the record. Any objections? This  
11 is the testimony of Dr. Goodhue. Hearing no objections,  
12 Exhibit 16 is entered into the record of this proceeding.

13 (The document referred to  
14 was marked for  
15 identification as Exhibit  
16 No. 16 and was received in  
17 evidence.)

18 CHIEF JUDGE STROTHER: Our hearing reporter, Mr.  
19 Jones, are you doing all right? Can we proceed ahead to  
20 the next witness or do you need a little break?

21 MR. JONES: Whenever you guys need a break, I'll  
22 take one, but, no, not now.

23 CHIEF JUDGE STROTHER: Very well. All right. I  
24 think we should just push ahead if everyone's okay with  
25 that. Hearing no objections.

1           Our next witness -- our next and final witness -  
2       - I suppose one more time if anyone wishes to add any  
3       evidence to the record and the way to do that is to  
4       presenting testimony, you need to let LaShawn Williams  
5       know now, because at the end of the testimony today, that  
6       will wrap up the evidentiary record, but if you -- if  
7       someone wants to testify, has some exhibits to put in,  
8       give that testimony, do write Ms. Williams right away  
9       because I now call to the stand -- virtual stand, Heather  
10      Donoho, a witness for the California Walnuts Board.

11           MS. CHILUKURI: Your Honor, Rupa Chilukuri, I  
12      just wanted to -- before we proceed, I just wanted to  
13      interject and let Ms. Donoho know that USDA would be  
14      objecting for the record as it relates to a form that she  
15      plans to introduce, form number two, and I could have  
16      objected I suppose when she moved to enter it. I wanted  
17      to give her a heads up that we will be objecting to the  
18      admission of that form, in part because it reflects  
19      language that is not currently in the CFR so it relates to  
20      7 CFR 984.67. That form number 2 has not been  
21      specifically noticed in the notice of hearing, so it's not  
22      referred to at all in the notice of hearing and perhaps  
23      most importantly, we want to be able to preserve USDA's  
24      position to be able to send -- if this rule making  
25      continues, to be able to send that form to OMB in a

1 separate proceeding at the appropriate time. So if it's  
2 part of this proceeding, there could be ex parte  
3 restrictions that limit our ability to do that. So again  
4 wanted to give Ms. Donoho that heads up that we'll be  
5 objecting to the record as it relates to that form and  
6 requesting that they withdraw it, or think about this --  
7 this issue. Thank you.

8 CHIEF JUDGE STROTHER: Okay. Why don't we  
9 discuss that with the witness when she takes the stand.  
10 And this form, just to be clear, it's a part of proposed  
11 Exhibit 19, or is it the whole of Exhibit 19?

12 MS. DONOHO: I believe it's just -- it's a  
13 portion.

14 CHIEF JUDGE STROTHER: Okay.

15 MS. DONOHO: It's -- it's -- was included just  
16 to be a sample so I could demonstrate the application of  
17 the proposed exemption process.

18 CHIEF JUDGE STROTHER: Let's get -- let's get  
19 you sworn in. Let's get you on the stand. We can talk  
20 about it further.

21 Whereupon,

22 HEATHER DONOHO

23 having been duly sworn, was called as a witness  
24 and was examined and testified as follows:

25 CHIEF JUDGE STROTHER: Thank you. I guess we'll



1 follow the typical procedure that we had that the witness  
2 will simply present her testimony statement rather than  
3 have a -- someone ask questions in the form of direct  
4 examination. Ms. Chilukuri and Ms. Donoho, do you think  
5 it's better we discuss the portion of Exhibit 19 that USDA  
6 objects to putting into the record now, or would it be  
7 better to take it up organically at that point -- at some  
8 point in the testimony?

9 MS. CHILUKURI: Your Honor, I think that the --  
10 I brought it up --

11 MS. DONOHO: I'm sorry.

12 MS. CHILUKURI: -- because I thought it would be  
13 better to address it before so that the form wouldn't  
14 enter the record and inhibit USDA's ability to perhaps  
15 have it in a separate proceeding.

16 MS. DONOHO: May I ask a question of you  
17 regarding that? Am I able to present the sample  
18 calculation for the -- the exemption which was separate  
19 from the form. There's a sample form which I can  
20 withdraw, and then there's a sample calculation which  
21 would just show how the exemption calculation would work.  
22 Is that acceptable to include the sample calculation?

23 MS. CHILUKURI: Yes, and I think that'd be  
24 compromised so we can understand what you're referring to,  
25 what you're -- what your intent and proposal is, but

1 without -- as I said, inhibiting our ability to perhaps  
2 move the form along more quickly, or without those ex  
3 parte restrictions. So if you'll recall, I think we  
4 actually did this two years ago too, so perhaps that would  
5 be the best way to proceed that you talk about your  
6 proposal, your intent, but without reference to that form.

7 MS. DONOHO: Okay. So I will not reference the  
8 form? Okay.

9 CHIEF JUDGE STROTHER: Well, is that -- are we  
10 going to get the separate document today? Is that --

11 MS. DONOHO: The document is included in my  
12 exhibits, Your Honor. The form and the exemption  
13 calculation so I can just reference the calculation. That  
14 is included as part of what we submitted.

15 CHIEF JUDGE STROTHER: Oh, okay, very well. So  
16 what we're really stipulated between USDA and California  
17 Walnuts Board is to exclude a portion of Exhibit 19 from  
18 the record and do we have page numbers for that or  
19 something? How can we identify the portion excluded?

20 MS. CHILUKURI: So perhaps Mr. Hatch or someone  
21 else when it's posting to the website, I think it's the  
22 reference to crop acquisition report, am I correct? No.

23 MS. DONOHO: No. No. It's -- it is the  
24 reference to the new form on the second page of my  
25 testimony below the first calculation. It's that entire

1 paragraph that begins with in order to address. So that  
2 paragraph would need to be stricken, and then in the  
3 paragraph below that, there's a reference to the form that  
4 I -- that I can withdraw and not include as well.

5 MS. CHILUKURI: And, Mr. Hatch, the form itself  
6 will be form number two, so that document. If you'll  
7 scroll down further, you'll see the actual form.

8 MR. HATCH: Right.

9 MS. DONOHO: It's -- it's that -- that form that  
10 should be excluded, correct.

11 CHIEF JUDGE STROTHER: Are there page numbers or  
12 anything for this exhibit?

13 MS. DONOHO: No, there are not.

14 CHIEF JUDGE STROTHER: Mr. Hatch, interesting --  
15 interesting problem when we're virtual. Is there a way of  
16 -- in Adobe Acrobat of say drawing a line through that  
17 page and making a notation excluded from record? Would  
18 that work for you, Ms. Chilukuri, or I guess in Adobe, we  
19 could -- you can extract pages if you have more technical  
20 expertise than I have.

21 MS. CHILUKURI: Yes, it would be possible to  
22 just delete a page in entirety, so if we're going to like  
23 organize pages and just delete this form completely.

24 CHIEF JUDGE STROTHER: Are you able to do that,  
25 Mr. Hatch?

1 MR. HATCH: Yeah, I can go do that right now and  
2 then bring the revised document back up on the screen.

3 CHIEF JUDGE STROTHER: Okay. And then there are  
4 also -- we're stipulating to -- I mean I guess we can just  
5 take it out without a reference. I don't think we need to  
6 -- I guess we don't have to leave a blank page there with  
7 a note that's saying withdrawn or anything. It's probably  
8 more confusing that to just have it taken out. Now the  
9 witness mentioned, a couple of parts of the testimony --

10 MR. HATCH: Yes.

11 CHIEF JUDGE STROTHER: -- are we able to remove  
12 that or either cross it out and put a note saying  
13 withdrawn?

14 MR. HATCH: I can see if I have an editable  
15 version, but I believe I have PDF. I'll see if I can  
16 modify the PDF --

17 CHIEF JUDGE STROTHER: Yeah, you can -- there's  
18 usually a box you -- that able is what -- I know one  
19 thing.

20 MR. HATCH: Ms. Donoho, could you re -- is it  
21 possible to restate which section of the testimony needs  
22 to be deleted?

23 MS. DONOHO: That's -- and if it would be  
24 helpful, Your Honor, Dana -- Ms. Hull here can run  
25 upstairs and remove those sections and resend the

1 testimony if that would be helpful.

2 CHIEF JUDGE STROTHER: Okay.

3 MS. DONOHO: Would that -- would that be easier  
4 for you? She can do that in a few minutes, just run up  
5 and do that. Would that be preferred for you?

6 CHIEF JUDGE STROTHER: Yeah, works -- works --  
7 works for me, Ms. Donohan.

8 MS. DONOHO: Donoho.

9 CHIEF JUDGE STROTHER: Let's see, let's see what  
10 to do when this comes up, but as far as I can tell, the  
11 biggest part -- I take it no one else in the audience has  
12 any objection to doing this. I mean I don't think they  
13 would have an objection raised since the witness is  
14 willing to do it. So, yeah, why don't -- why don't we go  
15 ahead and do that. We'll resubmit this -- and we'll have  
16 this transcript to explain what we're doing. I'll tell  
17 you what and can we label -- what if we should label the  
18 revised exhibits as revised or Exhibit 19A, something like  
19 that. Actually, as I think about it, that just makes  
20 things more complicated. Let's get a clean version of the  
21 exhibit for the official record and that -- that'll be the  
22 only one that's part of the official record, and there's  
23 this explanation in the transcript of what was done. I  
24 don't think we need more than that. Does anyone -- Ms.  
25 Chilukuri, does that make sense to you?

1 MS. CHILUKURI: Yes, Your Honor, thank you.

2 MS. DONOHO: And, Your Honor, also would you  
3 like us while we're doing that to pull the proposed form  
4 from the exhibits and remove that as well, and just resend  
5 the exhibits?

6 CHIEF JUDGE STROTHER: Yes, yes, I think so.

7 MS. DONOHO: Okay.

8 CHIEF JUDGE STROTHER: Yeah.

9 MS. DONOHO: Okay. Are we able to take a few  
10 minutes -- a five or ten-minute break just so we can get  
11 that done quickly?

12 CHIEF JUDGE STROTHER: Yeah, why don't we go  
13 ahead and do that.

14 MS. DONOHO: Okay.

15 CHIEF JUDGE STROTHER: Okay. It's 9:10 on the  
16 west coast/12:10 here. Is ten minutes going to be enough  
17 or do you want to take 20?

18 MS. DONOHO: Fifteen/20 would be ideal --

19 CHIEF JUDGE STROTHER: All right.

20 MS. DONOHO: -- Your Honor.

21 CHIEF JUDGE STROTHER: Why don't we just come  
22 back at 9:30 west coast time/12:30 east coast time.

23 MS. DONOHO: Yes, sir. I'm good with that.

24 CHIEF JUDGE STROTHER: Another particular topic I  
25 want to ask Ms. Chilukuri about the transcript correction

1 and briefing schedule. Do we have -- because after we  
2 finish with this witness, we'll take that up. Do you --  
3 do you have a proposal -- a USDA proposal for that,  
4 Counsel?

5 MS. CHILUKURI: Yes, Your Honor. We -- I've  
6 conferred with the AMS and we thought your proposal that  
7 you had suggested yesterday would be ideal.

8 CHIEF JUDGE STROTHER: Okay.

9 MS. CHILUKURI: So your proposal that you had  
10 suggested yesterday was two weeks for corrections to the  
11 transcript, one week for any objections, and then after  
12 certification of transcript, four weeks for briefs.

13 CHIEF JUDGE STROTHER: And you're thinking of  
14 one -- one brief?

15 MS. CHILUKURI: Right, that's what we had in  
16 mind.

17 CHIEF JUDGE STROTHER: Okay. All right. I'll  
18 issue an order on -- I can issue the order at the end of  
19 this -- on that. Well, it's -- there's two ways -- yeah,  
20 and you're thinking to get started on writing the brief  
21 before I certify the record, before I rule on any  
22 transcript corrections?

23 MS. CHILUKURI: Well, generally, I guess the  
24 briefs would be more so for opponents or proponents of the  
25 rule. I think that USDA's brief would sort of be our

1 recommended decision or final rule, so this is to give  
2 interested persons outside of USDA the opportunity to  
3 express their views based on the evidence in the  
4 transcript and the record.

5 CHIEF JUDGE STROTHER: Right, right, but you're  
6 going to have transcript corrections and objections there  
7 too, and then I have to certify, you know, what the actual  
8 final transcript is, but I don't think that's going to be  
9 -- I don't know how long that'll take me. I think four  
10 weeks -- with four weeks, people can start writing the  
11 brief without having any actual final --

12 MS. CHILUKURI: Right, right.

13 CHIEF JUDGE STROTHER: -- ruling on the  
14 transcript correction. It bothers me somewhat -- I don't  
15 know what we've done in other proceedings like this, that  
16 if somebody did have a problem with initial brief from  
17 someone, they should have the ability to say something  
18 about that. Now you could move to strike, of course, but  
19 say somebody put in some new proposal and said, yeah,  
20 that's improper, it's new, it wasn't brought up in  
21 hearing, move to strike, but if, you know, if somebody  
22 made an argument and said I really need to respond to  
23 that, I guess they could move to file a reply brief or an  
24 answering brief rather. So I guess that --

25 MS. CHILUKURI: Just, I --



1 CHIEF JUDGE STROTHER: Huh? Have we not built  
2 in multiple briefs before in these rule makings?

3 MS. CHILUKURI: I've not seen that. I supposed  
4 I've seen that that as you said someone could file a  
5 motion to do that so we've sort of let that -- that as the  
6 process that someone has the opportunity if they want to  
7 reply that they can file a motion with the court and  
8 request -- request that.

9 CHIEF JUDGE STROTHER: Actually, one -- one  
10 element of that is I guess -- I guess I certify the  
11 transcript. I guess after that, it leaves my  
12 jurisdiction, right?

13 MS. CHILUKURI: Right, I think so. I mean  
14 briefs would be filed with the hearing clerk and I suppose  
15 it doesn't completely leave your jurisdiction if someone  
16 were to file a motion for instance, to request extension  
17 for the briefing period of --

18 CHIEF JUDGE STROTHER: Um-hum.

19 MS. CHILUKURI: -- if they -- you want to file a  
20 reply brief, something along lines.

21 CHIEF JUDGE STROTHER: Okay. I suppose we can  
22 cross that bridge if we -- if we come to it.

23 MS. CHILUKURI: Okay. Very good. Thank you.

24 CHIEF JUDGE STROTHER: Okay. Very well. Two --  
25 two weeks for transcript corrections; one week for

1 objections to transcription corrections; immediately  
2 thereafter four weeks for briefs. Should we have an  
3 estimated time of ten days for the transcript? Shall I  
4 put in the expected -- I think I should put in the  
5 expected dates that -- of -- yeah, I'll probably give 12  
6 days from now or something like that as -- for the  
7 expectation that the transcript would be in by then and  
8 then two weeks after that -- a week after -- the actual  
9 dates on the calendar I think.

10 MS. CHILUKURI: That --

11 CHIEF JUDGE STROTHER: That make sense? Make  
12 sense to you? Make sense to everybody in -- hearing my  
13 voice? This virtual things is interesting. It's got  
14 nuance, doesn't it? All right. So let's -- let's  
15 reconvene. We'll go off the record and reconvene at 12:30  
16 eastern time/9:30 western time with a revised Exhibit 19.

17 (Brief recess.)

18 CHIEF JUDGE STROTHER: Okay. We received a  
19 revised version of Exhibit 19 that removes certain  
20 materials that USDA had objected to, and that the  
21 California Walnut -- Walnut Board agreed to remove. So  
22 the new version of Exhibit 19 which will be the official  
23 version has certain text deleted from the previous  
24 statement and has certain pages deleted from -- texts --  
25 certain texts deleted from Exhibit 18 which is the

1 statement or testimony and certain pages from Exhibit 19.

2 All right. Ms. Donoho, you have been sworn in  
3 and I think we've decided to follow the usual procedure of  
4 just having you present your statement. I don't think we  
5 started your statement though. Are you ready to go?

6 MS. DONOHO: I am, Your Honor, thank you.

7 CHIEF JUDGE STROTHER: The floor is yours.

8 DIRECT TESTIMONY

9 MS. DONOHO: Okay. My name is Heather Donoho,  
10 H-E-A-T-H-E-R, last name D-O-N-O-H-O. My address at the  
11 Walnut Board is 101 Parkshore Drive, Suite 250, Folsom,  
12 California 95630. I am the operations director for the  
13 California Walnut Board. I will be testifying today on  
14 several points, and I will be sharing three exhibits that  
15 were provided as part of one document.

16 In regard to proposal five, assessments, the  
17 amendment --

18 CHIEF JUDGE STROTHER: One moment, Ms. Donoho.  
19 Did you -- I'm sorry, did you give an address?

20 MS. DONOHO: I did. Your Honor, I did.

21 CHIEF JUDGE STROTHER: Very well. Thank you.  
22 Okay.

23 MS. DONOHO: Okay. In regard to proposal five  
24 assessments, the amendment would modify the language of  
25 Section 984.69 and 984.347 to A, remove kernel weight; B,

1 establish an initial assessment rate; and C, add interest  
2 and late-payment charges to late assessment payments as  
3 prescribed by the board with approval from the secretary.  
4 A conforming change to the regulation 984.347 would modify  
5 the measure of weight for the assessment calculation from  
6 kernel weight to in-shell. If implemented, the proposal  
7 will enable the California Walnut Board to further  
8 encourage compliance through the common business practice  
9 by assessing interest and late-payment charges. The rule  
10 will take effect at the time of publication to enable the  
11 California Walnut Board to collect assessments for the  
12 marketing year in which it is in effect.

13 The California Walnut Board consists of ten  
14 members and ten alternates. The makeup of the board is  
15 one public member, four handler members, and five grower  
16 members. The board discussed and voted unanimously in an  
17 eight to zero vote with two members absent in favor of a  
18 new mechanism. The goal of this new mechanism is to be  
19 equitable and not to increase handler burden. By using an  
20 `existing required report as a basis for assessments,  
21 there is no additional reporting burden on handlers.

22 All handlers are required to report crop  
23 acquisitions for receipts on California Walnut Board form  
24 number one, by January 15th of the marketing year. These  
25 reported receipts will be the basis for the application of

1 the rate to be paid in three payments through the  
2 remainder of the year -- February, May, and August. The  
3 group reviewed the float that was under the old mechanism  
4 to determine what would be equitable and not put -- and  
5 not put an increased burden on handlers.

6 The payment method reduces the amount due on the  
7 first billing versus the timing of the old mechanism, and  
8 it staggers the billings later in the year to allow  
9 handlers to pay in three installments versus monthly as it  
10 was under the certification of inspection mechanism.  
11 Billings would be generated in January, April, and July as  
12 prescribed by the board with payments due in February,  
13 May, and August.

14 The enclosed exhibit, this would be the first  
15 exhibit if we can put that on the screen. That's it,  
16 thank you. This exhibit provides a time line of  
17 cumulative assessment revenue as invoiced under the old  
18 system using an average of the prior three years versus  
19 the new proposed mechanism. The new proposed timing of  
20 invoicing begins later in the marketing year so that undue  
21 burden is not placed on handlers. Under the old system,  
22 handlers were invoiced monthly and approximately 48% of  
23 the total revenue for the year was invoiced by January.  
24 This is in contrast to the new system which would bill  
25 one-third or 33.33% of the total annual revenue in

1 January.

2 In addition under the old system, approximately  
3 76% of the total revenue for the year was invoiced by  
4 April. The new system would cumulatively invoice 66.67%  
5 of the total annual revenue by that time period.

6 The next enclosed exhibit, if we can pull up  
7 Exhibit 2? And if we can -- can we go down? I think it's  
8 -- yes, one more -- one more page. There we go. Thank  
9 you. This exhibit will include a sample calculation of  
10 how the assessment would be applied. This page you see on  
11 the screen this first page of this exhibit includes  
12 handler A's California Walnut Board form number one, which  
13 shows a total of one million pounds of walnuts received  
14 during the marketing year. And then the next page of this  
15 exhibit if we could go down one page -- one more page,  
16 sorry about that. This page shows the calculation for  
17 handler A's total annual assessment. Assuming a first-  
18 year assessment rate of 1.25 cents per pound of walnuts  
19 received, the note-in reported pounds is multiplied by  
20 .0125 for a total assessment for the marketing year of  
21 \$12,500. Handler A's assessment billings would be  
22 calculated and invoiced as follows: handler A would be  
23 invoiced one-third of the total assessment of \$12,500 in  
24 January and this is \$12,500 multiplied by 33.33% which  
25 equals \$4,166.66. Then handler A would be invoiced one-

1 third of the total assessment of \$12,500 in April and that  
2 amount would be the \$12,500 multiplied again by 33.33% or  
3 \$4,166.67. And then finally, handler A would be invoiced  
4 one-third of the total assessment amount of \$12,500 in  
5 July, and that's again the \$12,500 multiplied by 33.33% or  
6 \$4,166.67.

7 The final enclosed exhibit if we can go down two  
8 pages, there we go, provides a sample calculation of how  
9 any exemptions from assessments would be applied using  
10 handler A from the previous calculation sample. So this  
11 just shows that if handler A had an exempted amount of  
12 10,000 pounds that were sold to USDA, for example, for a  
13 Section 32 purchase, the 10,000 pounds would be multiplied  
14 by .0125 which would equal \$125. Therefore, handler A's  
15 April invoice in this example would be reduced by that  
16 \$125 so that amount invoiced would be \$4,041.67. If the  
17 exemption occurred after the last invoice of the marketing  
18 year was issued, which would be the July invoice, the  
19 California Walnut Board would issue a refund check to  
20 handler A in the amount of \$125. The refund would ensure  
21 that handler A receives a timely refund against current  
22 year assessments.

23 The requirements of the new assessment mechanism  
24 and application of interest and late-payment charges as  
25 recommended by the board and approved by the secretary,

1 will be provided to all handlers via their annual handler  
2 packets which are sent via signature-required mail at the  
3 beginning of each marketing year. The handler packets  
4 include a personalized cover letter for each handler, a  
5 copy of the annual California Walnut Board handler  
6 regulations, a full set of California Walnut Board  
7 required forms -- required and as-needed forms, and a copy  
8 of the Walnut marketing order. The walnut industry has  
9 minimal issues with collections, but the standard business  
10 practice of interest and late-payment charges will be a  
11 tool to help the board execute the order fairly. That  
12 ends my oral testimony.

13 CHIEF JUDGE STROTHER: Okay. Any -- any  
14 questions from the California Walnuts Board? I take it  
15 not since we haven't had them before. Any questions from  
16 USDA?

17 MS. PANKEY: Yes, Your Honor, this is Christy  
18 Pankey and I'll be questioning Ms. Donoho.

19 CHIEF JUDGE STROTHER: Your witness.

20 MS. PANKEY: Thank you.

21 CROSS EXAMINATION

22 BY MS. PANKEY:

23 Q Good afternoon, Ms. Donoho. Thank you for your  
24 testimony. I will begin by asking you a few questions  
25 about the California Walnut Board. Please describe your



1 role as an operations director for the board.

2 A In my role as operations director, I oversee all  
3 of the compliance, accounting, audits, budget, and  
4 operational functions of the board and the commission.

5 Q Thank you. Could you describe in more detail  
6 your role in relation to the development of the proposed  
7 amendments?

8 A My role mainly consisted in regard to my  
9 testimony of -- of looking at ways that we could implement  
10 a new assessment mechanism that would be equitable, that  
11 wouldn't place undue burden on handlers versus what we've  
12 had in the past with our -- our prior system so we -- we  
13 looked at different options to A, first look at what form  
14 would best be suited for this purpose and we came to the  
15 conclusion that the -- the form one would work well and  
16 then to structure the -- the invoicing/the assessment  
17 billings around that submission of that form and when that  
18 form is due. So that was a large part of my role in this  
19 process. I also helped finalize witness testimony after  
20 Ms. Connelly left the organization.

21 Q Okay. Thank you. You referred to we when you  
22 described working on the form and the assessment that  
23 commits them. Who are you referring to?

24 A Initially, I was referring to Ms. Connelly and  
25 myself when we first discussed this. Then there were

1 discussions with the executive committee as well, and the  
2 executive committee as I referenced in my testimony, the  
3 meeting of the board approved this, this new assessment  
4 mechanism that was recommended to the board by the  
5 executive committee.

6 Q Thank you. Could you describe the discussions  
7 had by the executive committee in regards to the proposed  
8 amendments?

9 A I think that the discussions mainly centered  
10 around, you know, the timing of the payments and how that  
11 compared to prior payments and how we would structure it  
12 so that it would be -- it would allow for a decreased  
13 administrative burden on both the handlers and staff of  
14 the Walnut Board.

15 Q Were there discussions about the equatability --  
16 equatability of the new assessment mechanism?

17 A Yes, there was.

18 Q Can you describe those discussions?

19 A Well, I think they -- they, you know, centered  
20 around having a system in place that wouldn't unduly  
21 burden the handlers, because under this new system since  
22 we'll be billing on receipts, and most of the receipts  
23 come in in the early part of the year, we wanted to be  
24 mindful of the fact that we couldn't -- we didn't want to  
25 place a burden on handlers early in the year when most of

1 their receipts come in, so we wanted to make sure that we  
2 were able to stagger billings to allow for adequate time  
3 for payment and not make it anymore -- make -- make  
4 payments due earlier than they were under the new system  
5 which would be a burden on handlers large and small.

6 Q Thank you. And in your opinion, do you think  
7 that a handler both large and small had an opportunity to  
8 provide their input into the proposed new assessment  
9 mechanism?

10 A Absolutely. I believe as some of the other  
11 witnesses testified to, many of these meetings were  
12 attended by those who weren't on the committee or weren't  
13 on the board so there was, you know, robust discussion  
14 throughout this process so, yes.

15 Q Thank you. Could you describe any outreach  
16 efforts that might have been conducted by the board to  
17 ensure that it is representative by the industry -- of the  
18 industry?

19 A I think are you speaking to this process in  
20 general? In the -- the process of all of these proposed  
21 changes in general?

22 Q Yes, ma'am.

23 A Okay. We, you know, I know that the board  
24 conducts a lot of outreach in its communications to  
25 industry. We send out regular newsletters, e-newsletters.

1 I just saw something recently on our Facebook page about  
2 this hearing itself encouraging participation. So the  
3 board conducted a lot of outreach and handler  
4 communications as well. We send out regular handler  
5 bulletins and ask that handlers share relevant information  
6 with their grower base if appropriate, so all of those  
7 types of outreach efforts were conducted for this.

8 Q Thank you. In your testimony, you state that  
9 there are two board members absent during the vote for the  
10 new mechanism. Could you speak as to why those members  
11 might have been absent?

12 A Gosh, I honestly have no idea. They're very  
13 busy people so we do have periodic absences. I think we  
14 had a strong representation with the 8/0 vote. I have no  
15 idea why they were absent.

16 Q Okay. Thank you. I will begin asking you  
17 questions more closely about the proposed amendments as  
18 stated in your testimony.

19 A Okay.

20 Q Were you involved with -- were you involved in  
21 the discussions providing the new assessment rate?

22 A Yes, I was.

23 Q And could you tell us how the proposed  
24 assessment rate was decided on?

25 A Well, I think as I mentioned earlier, initially

1 the -- the method of reporting was discussed. It was  
2 agreed that the crop acquisition report which is  
3 California Walnut Board form number one would be the best  
4 mechanism to use for assessment of reporting because it's  
5 a very detailed report, it's a once a year report that  
6 already is in existence so it wouldn't add any burden to  
7 handlers. Once that was decided, then it was just a  
8 matter of discussing the timing of the payments and how we  
9 wanted them staggered throughout the year. So we started  
10 by looking at the first payment being due after that  
11 acquisition report is due, which makes sense and then we  
12 staggered the remaining two payments toward the end, you  
13 know, latter part of the year.

14 Q Okay. And the -- thank you for that. And the  
15 proposed assessment rate of .0125, how was that figure  
16 developed?

17 A There was discussion I think it was a board  
18 meeting though. I'd have to double-check my notes. I  
19 know it was discussed at the committee level, and it was  
20 decided that the rate needed to be reasonable so we could  
21 continue to pay our bills, but I think as mentioned  
22 yesterday by a prior witness, we wanted to make sure the  
23 rate was reasonable and it didn't appear as though we were  
24 trying to recapture assessments for the years that we  
25 couldn't assess when we were going through this process.

1 So this rate is lower than the rate that was proposed  
2 originally for this current season and it's lower than  
3 rates for the last four out of the five years prior to our  
4 21/22 season.

5 Q Thank you. Did the board vote unanimously on  
6 this assessment rate of .0125?

7 A Let me see if I filed that information. I know  
8 that they voted on it, but I think the recommendation is  
9 made and voted on -- the recommendation was made by the  
10 marketing order and revision committee, recommended to the  
11 full board, and voted on on November 19th. It was a 7 to  
12 2 vote and the chair abstained. So that was on November  
13 19th, 2021.

14 Q Was it made clear during that meeting why two  
15 members dissented?

16 A I honestly don't recall. I'd have to go back  
17 through the minutes. I know there was a lot of discussion  
18 about whether to set a rate at all at the beginning or  
19 whether it should be left without -- without a rate so  
20 that may have been it -- the case there, but that's what I  
21 can recall at this time.

22 Q Can you explain why this -- why the board felt  
23 it was necessary to set a rate during this formal rule-  
24 making?

25 A Sure. I think going through the process, the

1 board was, you know, we didn't -- we don't ever know for  
2 sure what the time line is for this process and how long  
3 it's going to take and I think the concern initially was,  
4 you know, if -- if this process was completed and we had  
5 approval toward the early part of our marketing year and  
6 we didn't have a rating in place, our programs would be  
7 limited and we wouldn't be able to conduct business for  
8 that year when we desperately need to be assisting, you  
9 know, what -- doing marketing efforts and so I think we  
10 wanted to be able to move forward quickly and continue our  
11 activities because as you know -- as you know now, we're -  
12 - we're operating using reserve funding.

13 Q Thank you. Please explain why the assessment  
14 rate will be efficient to cover the board's budget and  
15 expenditures at the conclusion of this rule making?

16 A You know, I think it's -- as I mentioned, it's a  
17 reasonable rate. I -- it's not the highest rate we've  
18 ever assessed at, it's not the lowest, but it seemed to be  
19 a rate that would allow us to begin covering our costs and  
20 conducting the marketing activities that we need to do for  
21 the domestic market.

22 Q Thank you. Please explain why the proposed  
23 assessment mechanism requires conforming changes to  
24 modifying the calculation from kernel weight to in-shell?

25 A Well, the prior assessment mechanism as you know

1 used reporting that we received from DFA of California.  
2 That was based on a certified product so the conforming  
3 changes need to happen because we're not going to be, you  
4 know, certifying -- mandating a certified product and so  
5 we needed an alternate way to do that so obviously the  
6 language needs to be updated to reflect the new mechanism  
7 which would be assessing based on receipts.

8 Q Right. And the receipt is that -- you're  
9 referring to acquisition form one?

10 A Acquisitions, yes.

11 A We use those terms interchangeably, but, yes,  
12 the acquisitional part.

13 Q And how are walnuts reported on that form?

14 A They're reported on an in-shell basis.

15 Q Thank you. Okay. In your testimony, you  
16 mentioned the group reviewed the flow of billings under  
17 the old mechanism to determine what would be equitable and  
18 not place increased burden on handlers. Can you explain  
19 who the group was that you were referring to?

20 A Yes, that was the executive committee of the  
21 board.

22 Q Thank you. Can you explain how this new  
23 mechanism is equitable to industry?

24 A Well, I think it -- it provides a streamlined  
25 way of collecting assessments. It doesn't increase burden



1 especially on those handlers that are maybe smaller and  
2 have smaller staffs, and it is something that the handlers  
3 are familiar with because of the way we assess on the  
4 California Walnut Commission, so I think it'll be a much  
5 clearer, easier way to assess that everybody will be able  
6 to understand easier since they already do that on the  
7 commission side.

8 Q Thank you. Could you explain the similarities  
9 between the commission process and that of the new  
10 mechanism proposed?

11 A Sure. The commission -- the commission process,  
12 the commission assesses based on receipts as well. The  
13 commission is a self-purported system where handlers  
14 submit forms during the year on behalf of the growers. So  
15 that's very similar to what we would be doing on the  
16 board. The commission payments are staggered a little bit  
17 differently and we try to take that into account to make  
18 sure we didn't place burden on -- on handlers when it  
19 comes to the board assessments, but it's very, very  
20 similar. It's the same volume, the same in-shell weight  
21 received or acquired that the assessments would be based  
22 on for the board as they currently are for the commission.

23 Q Thank you. In your testimony, you mentioned  
24 that payments would be required in February, May, and  
25 August. Is there a reason for choosing those months in

1 particular?

2 A Well, I think the first month because the report  
3 form number one is due in January. We felt that the first  
4 billing it would be appropriate to send the first billing  
5 out in January later in the month after that form is  
6 received from us. And then after that, we just wanted to  
7 space out the payment requirements a bit for the handlers  
8 so that the payments could be spread out over the  
9 remainder of the year to make sure we don't increase the  
10 burden versus what they were doing before under the prior  
11 system.

12 Q Thank you. Was there any alternative billing  
13 schedule that was considered?

14 A I mean I think we, you know, I think we -- we  
15 looked at this as being probably the -- the easiest I  
16 think, you know, we may have talked about, but I don't --  
17 I don't remember exactly. We may have talked about an  
18 additional four -- four payments. We were trying to make  
19 it streamlined and as easy as possible and -- and thinking  
20 this would alleviate some administrative burden on  
21 handlers by having three payments staggered later in the  
22 year, so I think that was the primary discussion was the  
23 three-payment structure.

24 Q Thank you. Would this new mechanism for the  
25 assessment -- for collection of assessments increase the

1 administrative burden for the board?

2 A No, in many ways I think it would decrease the  
3 administration -- the administrative efforts of the board.  
4 First, we would be billing 3 times a year versus 12 times  
5 a year and also I think the calculation is much more  
6 simple and streamlined. We have an in-shell number for  
7 every handler that we're going to be dividing by three.  
8 The prior -- the prior billing system included reports  
9 from DFA that were both shelled and in-shell for each  
10 handler and we had to convert the in-shell inspected  
11 tonnage to shelled, add it to the shelled every month,  
12 then apply the assessment rate, then generate an invoice  
13 so this is much more simple. I think it will be much more  
14 easy for us to administer. I think it will be much more  
15 clearer -- much more clear for handlers as well.

16 Q Thank you. If implemented under the new  
17 assessment mechanism, will handlers have the option of  
18 paying either in one single payment, or can they make  
19 multiple payments?

20 A Well, we're going to bill them. We plan to bill  
21 them three times a year. You know, if they want to make -  
22 - if they want to make their payments all at one time, I  
23 think that's certainly not going to be a problem, but I  
24 would, you know, I doubt that will happen. You know,  
25 everybody's mindful of cash flow so I don't think that

1 would be a problem if a handler received a bill -- their  
2 first bill in January and felt like they could, you know,  
3 wanted to pay the whole thing, but we're certainly not  
4 going to -- we don't want to require that.

5 Q Okay. Thank you. I have a few questions about  
6 quality control.

7 A Okay.

8 Q So to clarify, it is the board's intention to  
9 maintain quality control authority if needed in the  
10 future, is that correct?

11 A Yes, it is.

12 Q If mandatory inspections are eliminated under  
13 the order, would import requirements also be eliminated?

14 A That's my understanding, yes, that they need to  
15 be consistent.

16 Q Thank you. Now multiple conforming changes to  
17 sections in the marketing order to maintain language. If  
18 the board were to recommend quality regulations in the  
19 future specifically Section 984.12 substandard walnuts.  
20 If implemented, this section would only apply if quality  
21 control regulations in Section 984.50 are in effect. Do  
22 you believe the industry has a solid understanding of  
23 these conforming changes?

24 A I do.

25 Q Okay. Thank you. To clarify, if quality

1 control regulations are not in effect, would all walnuts  
2 received under the new proposed assessment mechanism be  
3 considered merchantable?

4 A They would be with those exceptions that I  
5 believe have been shown multiple times in testimony  
6 yesterday.

7 Q Okay. Thank you. So under the new current --  
8 under the current assessment mechanism, are substandard  
9 walnuts assessed?

10 A I'm not a handler, but after listening to the  
11 testify -- the testimony yesterday, my understanding is  
12 that generally walnuts come to handlers after -- in many  
13 cases, after going through a huller dryer which leads me  
14 to believe that that's going to be a very small portion of  
15 what the handler requires.

16 Q Okay. Thank you. So walnuts that may be sold  
17 to governmental agencies, how would those be handled under  
18 the new assessment mechanism?

19 A Those would be exempt from assessments and when  
20 we are notified that a sale has taken place by a handler,  
21 then we would exempt that tonnage from assessments as in  
22 the example I provided to you with either crediting a  
23 future handler invoice, or by issuing a check to a handler  
24 as a refund, you know, should this take place prior --  
25 after our last invoice was issued for the year.

1 Q Okay. Thank you. I have a few questions about  
2 the proposed change to the definition to handle in Section  
3 984.13.

4 A Okay.

5 Q So in that section to handle, the 984.13, the  
6 proposed change would be to include the word receive.  
7 Based on this definition, could you explain when the act  
8 of handling begins?

9 A My understanding would be that the act of  
10 handling would take place when the handler takes ownership  
11 of the product.

12 Q Thank you. Would there be handlers who may not  
13 be assessed under this new proposed definition of to  
14 handle?

15 A I think unless they meet the criteria for those  
16 exemptions, I think we would capture the annual tonnage  
17 through our assessments based on this definition.

18 Q Okay. Thank you. All right. I'm going to ask  
19 you a few questions about the application of interest and  
20 late-payment charges now. How many days would a handler  
21 have to pay their bill -- to pay their billings when  
22 invoiced under the new assessment mechanism?

23 A Well, I think -- I think that's going to be at  
24 the discretion of the board and the approval of the  
25 secretary. I can tell you now according to our current

1 compliance -- compliance plan that we have to prepare and  
2 have the board approve every year for AMS, that we issue  
3 invoices, we provide a past-due notice at 60 days, we  
4 provide a second past-due notice at 90 days, and then at  
5 150 days outstanding, the assessment is referred to AMS.  
6 I can't speak to how the board would want to handle that,  
7 but, you know, it may be that the first year, the board  
8 decides to not implement this to give handlers a chance to  
9 get used to this new system. I don't know. We would like  
10 to have the authority to be able to to have interest and  
11 late-payment charges though should the board want to do  
12 so.

13 Q Thank you. And are late payments currently an  
14 issue for the board?

15 A There are very -- it's a -- they're a very, very  
16 small issue, you know? We have good compliance overall,  
17 but there are -- there are always times where it would be  
18 nice to have something that would -- that would encourage  
19 handlers to comply so, no, not a big issue.

20 Q Okay. Thank you. Is there any ongoing  
21 discussion on the board about how they may implement late  
22 payments?

23 A There have not been yet, no.

24 Q Okay. Thank you. Based on your -- based on  
25 the proposals by January 15th of each year, handlers must

1 submit a report that shows all received shipments prior --  
2 from the prior calendar year to the board, and the board  
3 is going to rely on this report to calculate assessments.  
4 In your testimony, you indicated that that is CWB form  
5 number one, is that correct?

6 A That is correct, but it would be acquisitions,  
7 not shipments, and it would actually be for that -- the  
8 form -- I believe the form reads that it's for the crop  
9 year. For example, this year handlers submitted the form  
10 for crop year 2021 which would include everything that  
11 acquired for crop year 2021 on January 15th, 2022, just to  
12 be clear.

13 Q Thank you. And thank you for that clarification  
14 and correction. How will the board verify that the in-  
15 shell poundage that is reported on CWB form number one for  
16 accuracy?

17 A Part of what we have added, obviously, it  
18 doesn't apply this year because we're not collecting  
19 assessments that we have added in our compliance plan for  
20 the first time handler audits so handlers have to keep  
21 receiving records for many purposes, so part of our plan  
22 in doing this is to audit handler receipts. We also are  
23 able to share information with the California Walnut  
24 Commission so we do cross check numbers -- receipts'  
25 numbers with the commission as well, so that's our plan is



1 to do regular audits of handlers which is very -- it will  
2 be very straightforward because the number reported is  
3 very straightforward.

4 Q Okay. Thank you. Could you tell me what the  
5 acquisition report for CWB form number one is currently  
6 used for on the board?

7 A The form is mainly used for a report that we  
8 issue every year showing that the total -- total crop for  
9 the year -- so if you look at the form, handlers report by  
10 county and also by variety so we issue a report along with  
11 our December 31 inventory report that shows total  
12 acquisitions in aggregate for the industry for the year,  
13 you know? And I believe this is a number that mass uses  
14 when they look at the total crop numbers that they report  
15 down the road as well annually.

16 Q Okay. Thank you. Are there any other forms  
17 that were considered for the purposes of assessment  
18 collection?

19 A It was discussed. The shipment reports, there  
20 is a receipts' number on form number six which is the  
21 shipment report for the industry, but that's a -- that's a  
22 monthly report. It seemed that this report would have far  
23 fewer adjustments needed and it's a once a year report,  
24 it's very detailed, it's a very well thought out report,  
25 you know, when the handlers submit this because they have

1 to provide all of the detail so the shipment report  
2 number, because there is a receipts' number on there, was  
3 discussed, but it was decided that this was the best  
4 report for what we needed it to do for assessments.

5 Q Okay. Thank you. Are -- could there be  
6 handlers that may receive walnuts after January 15th and,  
7 if so, how will the collections of assessments in  
8 reporting deadline effect them?

9 A This report is supposed to include all  
10 acquisitions for the crop year so occasionally we may have  
11 an adjusted number to this report, but that doesn't happen  
12 very often and I think we would make the same sort of  
13 adjustment with assessments, we would recalculate the  
14 assessment similarly to where we, you know, on occasion  
15 received a revised report from DFA of California. I don't  
16 think it's going to be any different, but it's just going  
17 to be much easier to calculate a change if a handler  
18 reports -- sometimes handlers might report -- submit an  
19 adjusted report. With this report, it doesn't happen very  
20 often, but we would take the revised number, verify, and  
21 then recalculate the assessment rate.

22 Q Okay. Thank you. And how would the board  
23 communicate the new assessment rate and late-payment  
24 charges if recommended to handlers?

25 A Well, as I referenced in my testimony earlier,

1 there is an annual handler packet that we send out to  
2 every handler at the beginning of the year that includes  
3 all the required forms, it includes information about the  
4 assessment rate, whether it's changed or hasn't changed,  
5 it includes any new requirements of handlers so we would  
6 be doing, obviously, updating that correspondence to  
7 reflect the changes and I would envision as well, we  
8 regularly send handler bulletins to handlers via email and  
9 I would presume that as -- if these changes are adopted,  
10 we would be, you know, sending handler bulletins. We do  
11 have a lot of communications with handlers. The main  
12 communication for these types of activities is the annual  
13 handler packet as I described.

14 Q Okay. Thank you. And the board's decision on  
15 the new assessment mechanism was that voted unanimously?

16 A Yeah, the mechanism -- this schedule of payments  
17 and all of that, yes. That was a unanimous decision that  
18 was recommended by the executive committee to the full  
19 board on February 24th, 2022 and that was a unanimous vote  
20 in favor.

21 MS. PANKEY: Thank you very much. Your Honor, I  
22 have no further questions.

23 CHIEF JUDGE STROTHER: Okay. Very well.  
24 Questions from anyone else for USDA?

25 MS. CHILUKURI: Yes, Your Honor, this is Rupa

1 Chilukuri.

2 CHIEF JUDGE STROTHER: Okay. Counsel, the  
3 witness is yours.

4 MS. CHILUKURI: Thank you. I'm having some  
5 connectivity issues so I'm talking by phone, but I will be  
6 asking Mr. Hatch to pull up some exhibits. I may not be  
7 able to see them so Mr. Hatch can just let me know when  
8 they're up.

9 BY MS. CHILUKURI:

10 Q So, Ms. Donoho, I just wanted to ask you a  
11 couple of questions about your testimony and other  
12 peoples' testimonies. Some people had mentioned the  
13 California Walnut Commission and that there's a parallel  
14 between what you're proposing now and what the California  
15 Walnut Commission, what their practice is. Can you speak  
16 to that?

17 A Yes, I can. The parallel really lies in the  
18 fact that we would like to move to a receipts-based  
19 assessment process which is what we do currently on the  
20 California Walnut Commission. I don't know if you want me  
21 to speak anymore about the specific process on the  
22 commission or not, but it's really the volume, the in-  
23 shell receipts' numbers that would be parallel between the  
24 two entities.

25 Q Okay. So the California Walnut Commission

1 assesses based on what handlers received, is that correct?

2 A That is correct.

3 Q So with the proposed changes to marketing order,  
4 is it fair to say that handlers would understand the new  
5 mechanism?

6 A Absolutely. I think it's especially new  
7 handlers that the, you know, are periodically come along  
8 and new companies starting up. You know, the system of  
9 the certifications between the shelled and in-shell, and  
10 it's confusing for people, and I think that the receipts  
11 is a much clearer streamlined assessment process that  
12 would be much easier to understand.

13 Q Thank you. So as it relates to the definition  
14 of could handle and Mr. Hatch may want to pull up Exhibit  
15 1, the notice of hearing, if everybody wants to take a  
16 look at that, so as it relates to that definition of to  
17 handle which is in 984.13, you -- the board has proposed  
18 to handle would now include to receive. I was curious if  
19 that was modeled after any other market -- marketing  
20 order?

21 A I'm honestly not sure. I believe it's similar  
22 to some other orders, but I can't give you specific ones.

23 Q Okay. Thank you. And do you think with that  
24 change in the language if to handle now includes to  
25 receive, do you think -- do you expect the number of

1 handlers subject to the marketing order to increase based  
2 on the addition of that language, or not?

3 A No, I don't.

4 MS. CHILUKURI: And, Mr. Hatch, if you would  
5 pull up Exhibit 6.

6 BY MS. CHILUKURI:

7 Q And I don't know if it's up there, but just  
8 speaking generally, what is your understanding of the  
9 exemptions from assessments that exist in the marketing  
10 order?

11 A My understanding that these are just various  
12 that are -- I'm sorry? Can you clarify your question?

13 Q Oh, I was just saying -- yes, so I was asking  
14 what is an exemption from assessment under the marketing  
15 order?

16 A I think there are some, you know, small sales  
17 that are exempt. I think that the one that would apply  
18 mostly to use would be the non-competitive outlet sales  
19 which would be for, for example, for a Section 32 purchase  
20 that our industry was involved in.

21 Q Okay. Thank you. So if Exhibit 6 is up --

22 MR. HATCH: Yes.

23 BY MS. CHILUKURI:

24 Q -- you -- what is your position on the right-  
25 hand column? Do you believe that should be the language

1 in the marketing order?

2 A Yes, I do.

3 MS. CHILUKURI: Okay. Thank you. Okay. Thank  
4 you, Ms. Donoho. I have no further questions.

5 CHIEF JUDGE STROTHER: Okay. Anyone else from  
6 USDA? Anyone from -- that is participating via Zoom have  
7 any questions for this witness? Anyone participating by  
8 telephone that has not already asked questions have  
9 questions for this witness?

10 MS. CHILUKURI: Your Honor, this is Rupa  
11 Chilukuri again. I understand that Ms. Donoho is our last  
12 witness that we have. I was hoping to speak briefly with  
13 AMS just to ensure we -- to have everything we need for  
14 the record before Ms. Donoho's released. Would it either  
15 be possible to do that or I know that we're awaiting  
16 additional information from Dr. Goodhue so if we have to  
17 recall Ms. Donoho, that's fine as well, but I was hoping  
18 to have that discussion with AMS at some point.

19 CHIEF JUDGE STROTHER: That okay with the  
20 California Walnut Board?

21 MS. DONOHO: That is. I do have one procedural  
22 question, Your Honor. Am I able to ask that now?

23 CHIEF JUDGE STROTHER: What -- I can't think of  
24 a reason why I need you to step down from the virtual  
25 stand or anything, but sure. I -- I'll tell you what,

1       okay, with that caveat, you're still going to be around, I  
2       guess, Ms. Donoho. Why don't we wrap up your testimony  
3       here. You've got a procedural question and then you have  
4       a request from AMS to take a little time and recall you or  
5       -- if necessary if -- and I don't know where we are with  
6       Professor Goodhue on hers, but why don't we let you step  
7       down from the stand for now subject to recall if  
8       necessary, I will -- I guess we have two exhibits for this  
9       witness. I think I would put those into evidence now.  
10      I'd ask if anyone has any to objection to Exhibit 18 and  
11      Exhibit 19 as -- Mr. Hatch, the one -- the versions of  
12      these we have on the web page are the current versions,  
13      right? As corrected basically?

14               MR. HATCH: Yes, sir. We provided them to the  
15      Public Affairs Office. It often takes about an hour for  
16      the updated documents to show to the public, but we are in  
17      that process.

18               CHIEF JUDGE STROTHER: Okay. But in any event,  
19      those will be the official versions. Does anybody have  
20      any objection to those versions going into the record?  
21      Hearing none, Exhibit 18 and 19 as described are admitted  
22      into the record of this proceeding.

23      //

24      //

25      //



1 (The documents referred to  
2 were marked for  
3 identification as Exhibit  
4 Nos. 18 and 19 and were  
5 received in evidence.)

6 Now let's turn to you -- your procedural  
7 question, Ms. Donoho.

8 MS. DONOHO: Thank you, Your Honor. Since I'm  
9 new at this, I know that there are a few items from the  
10 written testimony that I was hoping to clarify that I  
11 don't know that that's something that needs to be done or  
12 if I just clarify for oral testimony discrepancies.

13 CHIEF JUDGE STROTHER: If I -- I'm not sure I  
14 understand what you're saying. Are you saying that there  
15 are things in your written statement that you would wish  
16 to clarify? Are they -- or maybe are inaccurate? Is that  
17 what --

18 MS. DONOHO: Yeah.

19 CHIEF JUDGE STROTHER: -- you're saying? That  
20 there's something in your written statement that you would  
21 like to expand on?

22 MS. DONOHO: No, this is basically just a  
23 cleanup process where maybe I reference a prior witness if  
24 there's a typo in -- I guess that -- for written  
25 testimony. I don't know if that's even possible. If

1 there's a small typo or area -- and these are just all  
2 incidental things that those can be corrected at the end  
3 of the proceedings or not?

4 CHIEF JUDGE STROTHER: Well, I don't know. If  
5 somebody else can -- if somebody else has a different  
6 suggestion, I'm open to it, but we've got a hearing  
7 reporter, you know? I think, frankly, I'm getting  
8 questions from my attorney. All right. I -- if they --  
9 that there's difficulties with -- it's more trouble to  
10 revise documents and all, but we have a hearing reporter.  
11 We can put things in the record, the things that correct.  
12 Why don't we give that a shot and see where it goes. You  
13 have like a list of things you want to address and then --  
14 and is this just your testimony or other folks too?

15 MS. DONOHO: Oh, no, this is -- this is just  
16 prior testimony and it's very small so it's probably  
17 insignificant and not necessary, but I just want to make  
18 sure I'm doing everything I'm supposed to be doing. So --

19 CHIEF JUDGE STROTHER: Well, sure. Is this  
20 prior to other witnesses or your testimony?

21 MS. DONOHO: This is prior to my testimony.  
22 This was just a witness testimony yesterday.

23 CHIEF JUDGE STROTHER: I'm still confused.  
24 USDA, do you have a view as to what we should do here.

25 MS. CHILUKURI: Yes, Your Honor. So just in

1 past proceedings, for instance, Judge Clifton, for  
2 instance, when she's presided over past hearings, she  
3 noticed a spelling error or something like that, she would  
4 correct it on the record and ask that we -- even with  
5 handwritings, that the documents be updated so I suppose  
6 it really depends on how important the revisions would be.  
7 I don't really necessarily think it's necessary if it's  
8 just a comma or something like that because as we said,  
9 these witnesses are also testifying so we have everything  
10 through the transcript as well, but if there's an  
11 incorrect number in terms of amounts or incorrect  
12 regulatory reference, then it -- I think it is important  
13 that those be corrected, but if it's just a typo that, you  
14 know, received is spelled wrong or something like that,  
15 then I think that wouldn't necessarily need to be  
16 corrected.

17 CHIEF JUDGE STROTHER: Yeah, okay, we might as  
18 well have the corrections I think. Let's reback on the  
19 virtual stand and remind you that you're still under oath  
20 and why don't we just go through the corrections you  
21 propose and if there's any issues with anything, we'll  
22 talk about those at the time, but otherwise, these will  
23 be, you know, part of the transcript and will be part of  
24 the record.

25 MS. DONOHO: Okay.

1 CHIEF JUDGE STROTHER: Go ahead, Ms. Donoho.  
2 Thank you.

3 MS. DONOHO: Thank you, Your Honor. In Mr.  
4 Carriere's testimony yesterday, there are two places  
5 within his testimony, paragraph four should read the  
6 amendment would modify the language of Section 984.69 and  
7 984.347. The 984.347 was not included.

8 CHIEF JUDGE STROTHER: Okay.

9 MS. DONOHO: And then paragraph six reads  
10 Section 984 establishes an initial assessment rate, that  
11 should read Section 984.347 instead.

12 CHIEF JUDGE STROTHER: Very well.

13 MS. DONOHO: And then the final on his testimony  
14 on page two, paragraph three reads in regard to item  
15 984.69C and that should read 984.69B.

16 CHIEF JUDGE STROTHER: Okay. I don't see any  
17 reason to bring Mr. Carriere back or do anything more than  
18 to have this -- I think these are really minuscule  
19 corrections for the most part and I think we have a  
20 witness competent to testify to them here if there were  
21 any -- was any issue about it. So, USDA, do you have any  
22 objection to these corrections?

23 MS. CHILUKURI: No, Your Honor.

24 CHIEF JUDGE STROTHER: I take it -- does anyone  
25 else have any objections? Very well. Okay.

1 MS. DONOHO: Thank you.

2 CHIEF JUDGE STROTHER: Ms. --

3 MS. DONOHO: Thank you, Your Honor.

4 CHIEF JUDGE STROTHER: -- Donoho, is that all  
5 that you have?

6 MS. DONOHO: That's all. Thank you.

7 CHIEF JUDGE STROTHER: Very well. Okay. You  
8 may step down from the virtual stand and thank you for  
9 your testimony.

10 All right. Where do we -- don't -- don't --  
11 folks, do not let me forget to do whatever, you know, we  
12 need to do to wrap up this hearing, but we have a question  
13 of witness Goodhue, putting together a sheet with certain  
14 calculations on it, I guess is the way to say it. This  
15 came up in her examination earlier. She was going to  
16 draft this document and make it available. What's the  
17 status of that?

18 DR. GOODHUE: So, Your Honor, I have the  
19 document. Dr. Hinman's instincts are good, so what I have  
20 in my testimony, I swapped the price for shelled with the  
21 price for in-shelled and those are the prices that then  
22 came up with the DFA average price that I cite in my  
23 testimony, but it turns out swapping them results in a net  
24 difference of 6, yeah, \$670. So then the other difference  
25 -- can I share a screen? Is that feasible?

1 CHIEF JUDGE STROTHER: Can we do that?

2 Actually, let's -- let's just recall witness Goodhue to  
3 the stand. I remind you that you're still under oath.

4 DR. GOODHUE: Sorry, I missed that. My internet  
5 went fuzzy again.

6 CHIEF JUDGE STROTHER: I said we're going to  
7 come up -- put you back on the stand. We'll recall you  
8 to the stand and I remind you that you're still under  
9 oath.

10 DR. GOODHUE: Okay.

11 CHIEF JUDGE STROTHER: Let's get -- let's get  
12 the doc -- if we can, let's get the document you're  
13 discussing up on the screen. Do we have in mind -- I  
14 think we have in mind marking this as an exhibit and  
15 entering it into the record, is that right? Anybody?  
16 USDA?

17 MS. CHILUKURI: Yes, Your Honor. My  
18 understanding was that if, you know, if they're going to  
19 rely on it, you know, we want to discuss it, it's probably  
20 best that it be in the record so we can refer to it later  
21 -- USDA --

22 CHIEF JUDGE STROTHER: Yeah, absolutely.

23 MS. CHILUKURI: -- can refer to it later.

24 CHIEF JUDGE STROTHER: And let's get this on the  
25 website and everything and I don't know whether to --

1 well, you all have been the ones numbering the exhibits.  
2 Do we want to call this Exhibit 16A or do we want to call  
3 it Exhibit 19? No, I mean not 19, 20. Twenty would be  
4 our next exhibit in order. I'm inclined to call it 16A to  
5 better associate it with Ms. Good -- Professor Goodhue.

6 MS.CHILIKURI: We would be fine with that, Your  
7 Honor.

8 MR. HATCH: This is Andy -- yeah.

9 CHIEF JUDGE STROTHER: All right. Hearing no  
10 objection, we're -- we now have Exhibit 16A on the screen,  
11 some calculations that Professor Goodhue did after she  
12 stepped down from the stand earlier that we'll be entering  
13 into the record if there's no objection.

14 Please proceed, witness Goodhue.

15 (The document referred to  
16 was marked for  
17 identification as Exhibit  
18 No. 16A.)

19 DR. GOODHUE: I just want to put one more number  
20 in for comparison to make it easier when people are  
21 looking at it.

22 Okay. So I made a small error in my  
23 calculations which is why it's taking me so long because I  
24 wanted to identify the source of the difference and so  
25 effectively what I did before is so there's a cost for

1 time for in-shell and shelled and I swapped those prices  
2 previously so I corrected that and much to my  
3 astonishment, there is very little difference in the total  
4 cost. Okay? But then what did change is the distribution  
5 of those costs, and that's because the cost conversion  
6 factor which is the difference -- which is the ratio of  
7 the cost of in-shelled to shelled, based on information  
8 that California Walnut Board collected from interviewing  
9 handlers, so that gave the cost conversion factor and then  
10 we have a cost for time and that is then what the DFA  
11 reports effectively. So there was -- this is the DFA  
12 price --

13 CHIEF JUDGE STROTHER: When you say this is, I  
14 think you're going -- for the transcript --

15 DR. GOODHUE: Oh --

16 CHIEF JUDGE STROTHER: -- you're going to have  
17 to tell us what that is.

18 DR. GOODHUE: Right. So this \$770 is the price  
19 that comes from DFA.

20 CHIEF JUDGE STROTHER: That's the last column  
21 far right?

22 DR. GOODHUE: Oh, sorry.

23 CHIEF JUDGE STROTHER: Okay.

24 DR. GOODHUE: Last column far right, one, two --  
25 third number down, second number up, so the 770. So this



1 is equivalent to having this price for 6.09 which is the  
2 one, two, three -- fourth number down in the second column  
3 from the right so it's effective -- it results in a  
4 shelled price of 6.09 and an in-shelled cost of inspection  
5 for 8.87, but again when I fix my prices, what changed a  
6 lot is who's bearing the cost of shelled and in-shell  
7 because -- okay, let me put those numbers down here if I  
8 can make that work. So you said it was going to be an  
9 appendage of my original one?

10 CHIEF JUDGE STROTHER: Well, yes, your -- I have  
11 in mind labeling this Exhibit 16A.

12 DR. GOODHUE: Okay. Because I just -- so then  
13 here are the numbers for comparison.

14 CHIEF JUDGE STROTHER: The transcript can't see  
15 here. Sorry.

16 DR. GOODHUE: Yeah. No, no, so what I've done  
17 is below the table, I've got three lines labeled  
18 referencing the Exhibit 16, so then the total from Exhibit  
19 16 for purposes of comparison was \$6,000 or, sorry,  
20 \$6,033,577 and this is the total cost of inspection, and  
21 so that's \$670 more than when I fixed my error which is  
22 the bottom right entry on the table which is \$6,032,950  
23 and -- but again as I stated, looking at the bottom line  
24 of the table, the in-shell cost is 2 -- roughly \$2.9  
25 million and the shelled cost is \$2.7 or 8 million roughly,

1 and that compares to in the exhibit an in-shell cost of \$2  
2 million and a shelled cost of \$4 million.

3 So again I swapped the prices and the prices  
4 that I'm referring to are in the columns labeled in-shell  
5 and shelled, looking at the second from the bottom  
6 entries. Okay, so that's how I got my original numbers.  
7 And so for a -- for a very small difference in total cost,  
8 it took me quite a while to figure out why I was getting  
9 the little difference. So my apologies to the Court.

10 CHIEF JUDGE STROTHER: Oh, no worries about  
11 that. Just want to make sure that it's clear.

12 DR. GOODHUE: Yeah, I wish the table was better  
13 formatted on that to that point.

14 CHIEF JUDGE STROTHER: Well, you can take a  
15 couple -- I don't object you taking a couple minutes to  
16 play with it. Maybe type Exhibit 16A up at the top right-  
17 hand corner or wherever we're --

18 DR. GOODHUE: Sure.

19 CHIEF JUDGE STROTHER: -- putting that too.  
20 That's not going to mess up all the formatting in the --  
21 in the spread

22 DR. GOODHUE: Maybe everybody else could go on  
23 break. I don't know, just a suggestion, Your Honor. This  
24 -- the only thing worse than formatting a table has got to  
25 be watching someone else do it.

1 DR. HINMAN: Your Honor, may I ask a question?

2 CHIEF JUDGE STROTHER: I'm -- I'm sorry, who's  
3 this? Who's speaking?

4 DR. HINMAN: Oh, yeah, Donald -- Donald Hinman,  
5 USDA, excuse me, Your Honor.

6 CHIEF JUDGE STROTHER: Yeah, I don't think  
7 anyone has any objection, Mr. Hinman. Please.

8 DR. HINMAN: Thank you.

9 CHIEF JUDGE STROTHER: Yeah, I expected to give  
10 -- by the way, I'm going to give all the participants the  
11 opportunity to ask questions about this, but why don't we  
12 just say that you're first up for the examination of this  
13 witness about Exhibit 16A.

14 MS. CHILUKURI: Your Honor, before Mr. -- before  
15 Mr. Hinman begins, I just want to clarify does Dr. Goodhue  
16 want to take some time to finalize the exhibits or -- I  
17 thought she wanted to take a break to work on it a little  
18 bit more.

19 DR. GOODHUE: Your Honor, I'm flexible. If  
20 people think this is readable, that's fine. I just find  
21 the formatting hard to read myself.

22 CHIEF JUDGE STROTHER: All right. Well, yeah,  
23 how much do you need? Ten minutes? Fifteen minutes?

24 DR. GOODHUE: Your Honor --

25 DR. HINMAN: Your Honor, could I ask -- could I

1 ask a question just before we go on break about this table  
2 and then she can proceed to reformat it?

3 CHIEF JUDGE STROTHER: Yes.

4 DR. HINMAN: Yes, Dr. Goodhue, thank -- thanks  
5 for your extra effort. We greatly appreciate it.

6 I guess one thing I'm, you know, your breakdown  
7 is helpful here, but I guess I -- shouldn't -- shouldn't  
8 918 and 2767 add up to 6132? They don't. Should that be?  
9 They add up to -- they add up to about \$5.6 million  
10 instead of \$6 million.

11 DR. GOODHUE: Okay. Let me go back and check  
12 that too.

13 DR. HINMAN: I mean the total cost should add  
14 up, right? With the two -- the two --

15 DR. GOODHUE: It should add up. I see what you  
16 mean.

17 DR. HINMAN: It doesn't -- it doesn't quite add  
18 up. It's several hundred thousand dollars off and if you  
19 want to --

20 DR. GOODHUE: Yeah.

21 DR. HINMAN: -- if you want to take your time.

22 I mean we've already, Your Honor, I think we -- the --

23 DR. GOODHUE: Yeah, I mean I'd appreciate it  
24 because tracking down that error. So --

25 CHIEF JUDGE STROTHER: All right. Is 15 minutes

1 sufficient?

2 DR. GOODHUE: It should be. I sure hope so.

3 CHIEF JUDGE STROTHER: Okay. Well, I mean we've  
4 scheduled this hearing for all day today and we're not --  
5 we're not going to use it, we might as well get it right.  
6 We've taken a lot of time -- time with this case and I  
7 don't think it's easy doing paperwork with a big audience  
8 so, yeah, all right.

9 I've got -- it's about a quarter of 11 west  
10 coast time/quarter to 2 east coast time. Why don't we  
11 just come back at 11 and -- and 2 respectively and so  
12 until then we're off the record. Thank you.

13 (Break)

14 DR. GOODHUE: Yes, Your Honor.

15 MR. JONES: Yes, sir, we're on.

16 CHIEF JUDGE STROTHER: Okay. Thank you, Mr.  
17 Jones, our hearing reporter.

18 Okay. Professor Goodhue, do you have a -- did  
19 you have time to put together your proposed Exhibit 16A?

20 DR. GOODHUE: Sure. It's not -- still not as  
21 beautiful as I would like, but -- so --

22 CHIEF JUDGE STROTHER: Well, you can take a few  
23 more minutes if you want.

24 DR. GOODHUE: No, I'm just thinking about how I  
25 want to explain it. So I'll be clear here that there is

1 something odd with the class conversion factor because  
2 that is actually not the ratio of these two numbers and so  
3 then the question is where is the error? So I'm going to  
4 make two points. I added -- and the class conversion  
5 factor -- factor, excuse me, is in the middle of the table  
6 on the right-hand side and I have placed it in red and  
7 then what I've done in the bottom right-hand cell of the  
8 table is I've put in the two totals. The top total is the  
9 one I -- I showed you previously and this -- the total of  
10 \$6 million roughly is equal to, let's see, so the \$6  
11 million is equal to the total industry volume times the  
12 DFA average cost of inspection per ton and so I guess I'll  
13 expand. So I'm now labeling that in the table the  
14 vertical product, okay, so that it's the total volume  
15 multiplied by the DFA average price and then the smaller  
16 number is going to be the horizontal sum -- the \$5.68 --  
17 \$5,686,330 is going to be the horizontal sum of these  
18 total cost numbers.

19 So I'm going to make two points. One is unless  
20 people want to stay here all day, I don't know if I'm  
21 going to be able to find this, because this is far back in  
22 my calculations it could take me a while. And then I'm  
23 going to make the second point that these are prices that  
24 I imputed and so that's why it's got to be in the  
25 conversion factor based on, you know, industry

1 information.

2 And then regardless of what mistake I made here,  
3 okay, if I can --

4 CHIEF JUDGE STROTHER: You're going to have to  
5 describe for the --

6 DR. GOODHUE: Yeah, sorry.

7 CHIEF JUDGE STROTHER: -- for the transcript  
8 again.

9 DR. GOODHUE: Yeah, I'm so used to teaching  
10 where people can see things. Okay. So the cost  
11 conversion factor is the third row. I've highlighted it  
12 in red. It is actually not the cost ratio if you divide  
13 the in-shell price which is line four, the first number  
14 entry divided by the shelled price which is the same line,  
15 the next entry to the right. And so then there's -- the  
16 mistake somewhere is in the calculation of those two  
17 prices, it has to be. And so I'm going to make that  
18 point. Okay.

19 And then the point I will say also is that where  
20 -- I've put that cost conversion factor in red and then  
21 again in the bottom right-hand cell I've put the  
22 difference in the multiplying the total volume by the DFA  
23 average cost of inspection. I've labeled that as vertical  
24 product and then in that same cell, I've labeled the sum  
25 of the two costs using the imputed prices. I've labeled

1 that horizontal sum and those are also in red.

2 Then the final point I will make is the 778 is  
3 the DFA's average cost of inspection, and so one can look  
4 at the total volume and multiply that by the average cost  
5 and that gives a total inspection cost of \$6,032,950. So  
6 based on that number, okay, I think that this is a  
7 reasonable measure of the cost and again the -- and that  
8 \$6,000 -- \$6,032,950 which is the very bottom line of the  
9 exhibit below the table is only \$677 off of the original  
10 total from Exhibit 16 which is \$6,033,577 and so again, if  
11 when just used the DFA average cost and the total volume,  
12 then this is what the inspection costs would be. And so  
13 the total volume I've added at the bottom of the exhibit  
14 and it's 783,500 tons and below that, the DFA cost of  
15 inspection, and then the total inspection cost. And so  
16 what I would say bottom line is whatever error made and  
17 again I have not been able to disentangle it, I think that  
18 it is -- would be a reasonable thing to do if I had not  
19 sought to integrate industry information and, you know, to  
20 figure out the DF -- the source of the DFA's price and had  
21 simply done this, then this is what the measure of cost  
22 would be. So I think that this is a reasonable measure.

23 And then the difference would be -- but again  
24 the issue then is simply -- the issue is disaggregating  
25 the share of the cost that goes to in-shell versus shelled



1 sales and nothing that we've talked about in the rest of  
2 the hearing in terms of the implications of the proposed  
3 changes in the order is dependent on that allocation in  
4 any way. So that's the other reason I think that just  
5 using the total is reasonable because while it can be  
6 interesting to look at the in-shell versus shelled cost,  
7 at least when I get my numbers right it'll be interesting  
8 or maybe it's more interesting because they're not right,  
9 but again if one just goes with the average and doesn't  
10 try and justify it by integrating information from  
11 industry, this would be the cost -- the total inspection  
12 cost and by this, I mean the last -- the last line on  
13 Exhibit 16A, total inspection cost.

14 There's got to be -- oh, sorry, Your Honor, you  
15 need to assess that, not me. It's a teacher thing.

16 DR. HINMAN: Okay. Your Honor, Donald Hinman,  
17 may I make a comment?

18 CHIEF JUDGE STROTHER: Yes. I -- are you -- is  
19 the witness through? I see -- I see this is as a -- yeah,  
20 I see this as a supplement to your original --

21 DR. GOODHUE: Yes, sir.

22 CHIEF JUDGE STROTHER: -- direct testimony and  
23 statement and so the next step is to have questions from  
24 the other participants. I don't think California Walnut  
25 Board has any questions unless there's something --

1 MS. KATHIR: Excuse me, Your Honor. So Mr.  
2 Guerra raised his hand.

3 CHIEF JUDGE STROTHER: All right. Why don't we  
4 -- yeah, why don't we try that. I just want to make sure  
5 that the -- that this testimony is clear. Mr. Guerra was  
6 a witness for the California Walnut Board previously and  
7 I'm going to allow him to ask a question within the nature  
8 of helping the direct testimony here like any -- anybody  
9 presenting a witness would be able to question him on  
10 direct and then I'll allow USDA to ask questions in the  
11 nature of cross-examination. I know we're not being so  
12 formal, I'll let you -- and we'll go back and forth until  
13 we figure this out.

14 Okay, Mr. Guerra?

15 MR. GUERRA: Good morning. Can you hear me,  
16 Your Honor?

17 CHIEF JUDGE STROTHER: I can.

18 MR. GUERRA: Okay. I -- I just wanted -- I  
19 believe that they -- that Ms. Goodhue is telling us that  
20 her rates for the inspections are reversed. It's cheaper  
21 to have in-shell walnuts inspected than it is shelled and  
22 if those rates are reversed then the other numbers match  
23 up or really closely. I hope that helps.

24 CHIEF JUDGE STROTHER: Let's see what Professor  
25 Goodhue, what do you think? Does that make sense to you?

1 DR. GOODHUE: It makes sense to me in part  
2 because I was convinced I had them reversed the other way  
3 and so now I want to go back and check my labels because  
4 that could be the sensor there.

5 So, Mr. Guerra, you're saying that the shelled  
6 should be 8.8 -- should be higher?

7 CHIEF JUDGE STROTHER: Mr. -- well, I don't know  
8 if you're muted. We can't hear you.

9 MR. GUERRA: Oh, I'm sorry. Yes, if the shelled  
10 is 887 and the in-shell is 609, the total comes out to  
11 \$6,034,830 so very close.

12 DR. GOODHUE: Yeah. Okay. So that -- that  
13 makes sense because I was -- when I was going back through  
14 things, oh, sorry, when I was going back through things, I  
15 had them swapped and what might have happened is at some  
16 point in the calculations I could have swapped in-shell  
17 and the out -- and shelled at some point in the process.  
18 And so, let's see, so let's -- I'm trying to figure out  
19 how to integrate that into this. And so can you tell me  
20 again the total you got, Mr. Guerra?

21 MR. GUERRA: Well, if you were to input 609  
22 there where you have 887 --

23 DR. GOODHUE: Um-hum.

24 MR. GUERRA: -- and 887 where you have 609, then  
25 my total comes out to \$6,034,830 so, you know, within a

1 very small amount.

2 DR. GOODHUE: Okay.

3 MR. GUERRA: It would recheck. And it also very  
4 closely matches the exhibit -- the original exhibit.

5 DR. GOODHUE: Okay. And then just that -- and  
6 wait, so it matches the total in the exhibit in -- in  
7 total and so then I guess it's a question of checking --  
8 it still raises the issue of the allocation across in-  
9 shell and shelled, but eyeballing it, I think that would  
10 probably do it. Let me just do another quick calculation.

11 DR. HINMAN: Your Honor, Donald Hinman, USDA.

12 CHIEF JUDGE STROTHER: Yes, I was going to call  
13 you. I thought we would give the witness a moment to  
14 think about this --

15 DR. HINMAN: Yes.

16 CHIEF JUDGE STROTHER: -- but maybe whatever  
17 question you have might be -- might help us out here.

18 DR. HINMAN: I -- I was just going to offer a  
19 suggestion since the -- I believe we have an additional  
20 question from AMS for Ms. Donoho. Maybe we could continue  
21 with that and come back. You know, recall Ms. Goodhue.

22 CHIEF JUDGE STROTHER: Okay. Ma'am, I'm sorry  
23 that -- put as much of this on the record as we have. I  
24 guess what I -- I would -- what I would suggest is that we  
25 do bring Ms. Donoho back, ask the additional AMS question,

1 and let this witness Goodhue work on her proposed Exhibit  
2 16A so that we get it right, but I want to make sure we  
3 have all the -- all the questions we have about this  
4 exhibit out on the table so we can -- so the witness knows  
5 -- so that we have a good idea of where we're trying to  
6 get to with the revisions to the exhibit.

7 Is there any other comment on -- any other  
8 corrections we may need to make for this exhibit?

9 DR. HINMAN: I just want to -- can I ask Dr.  
10 Goodhue, Your Honor?

11 CHIEF JUDGE STROTHER: Yes.

12 DR. HINMAN: The different rates there, Dr.  
13 Goodhue, if you -- when you come back with the re-eval,  
14 could you explain what cross conversion means?

15 DR. GOODHUE: Okay. Sure.

16 DR. HINMAN: I don't think that's clear, but why  
17 -- why don't you save that for when you come back on the  
18 record -- table.

19 DR. GOODHUE: Okay.

20 DR. HINMAN: That's it. That's all, Your Honor.

21 CHIEF JUDGE STROTHER: Okay. Let's let you step  
22 down from the stand and we'll bring you back, Dr. Goodhue,  
23 and if I -- whenever that is, you'll -- we'll have a  
24 better -- a better Exhibit 16A. I appreciate the careful  
25 work on this by everyone.

1 All right. So we'll call back to the stand Ms.  
2 Donoho. Ms. Donoho, I remind you that you're still under  
3 oath, you're on the stand as a witness again. We have  
4 some further examination from USDA. Who's doing the  
5 questions? Mr. Hinman, are you asking the questions?

6 MS. CHILUKURI: Your Honor, this is Rupa  
7 Chilukuri.

8 DR. HINMAN: No, Your Honor. No, Your Honor.

9 MS. CHILUKURI: I was actually muted and I  
10 couldn't speak so I apologize for that.

11 I was actually hoping we could take a lunch  
12 break and then resume with either Ms. Donoho or Ms.  
13 Goodhue.

14 CHIEF JUDGE STROTHER: Well, that's -- the only  
15 problem with lunch break is 11 -- well, we only took a  
16 half hour yesterday anyway so it's 11:15 out west. I'm --  
17 I'm at the -- I'm in service to the participants here. Do  
18 we want to take an hour and come back? Everybody? I take  
19 it --

20 MS. CHILUKURI: That would be -- that would be  
21 fine with me and perhaps Ms. Goodhue could let us know  
22 how, you know, her expectations of how long it would take  
23 to finalize that exhibit.

24 DR. GOODHUE: I just am checking Mr. Guerra's  
25 suggestion and so I think there's going to be small

1 differences at this point, but I would like to have the  
2 hour just in case --

3 CHIEF JUDGE STROTHER: Okay, sure.

4 DR. GOODHUE: -- so I can make it as clear as  
5 possible.

6 CHIEF JUDGE STROTHER: I don't want to use up  
7 the -- I don't want to use up our entire day just to use  
8 up our day, but it doesn't sound like anyone's telling me  
9 they need to be somewhere else or anything so, yeah, let's  
10 take -- let's take an hour break and come back at 12:15  
11 western time, whatever that is, 3:15 eastern and we will --  
12 -- whatever we -- whatever we do then -- we'll either have  
13 Ms. Donahue -- Donoho come back on the stand or Professor  
14 Goodhue, whichever makes sense and then we'll talk about  
15 briefings, schedules, and transcript corrections and that  
16 should wrap up today.

17 So off -- see everyone back at 12:15 western  
18 time. Off the record.

19 (Lunch break)

20 CHIEF JUDGE STROTHER: And I guess we can go  
21 back on the record.

22 How are we doing -- I just -- how are we doing?  
23 We had that revised exhibit from witness Goodhue and if  
24 that wasn't ready, we were going to take up a question  
25 USDA/AMS had for witness Donoho.

1 MR. JONES: Okay. We're on the record, Judge.

2 CHIEF JUDGE STROTHER: Thank you, Mr. Jones

3 MR. JONES: Thank you.

4 MR. HATCH: This is Andy Hatch. I'm sharing my  
5 screen showing the table that Professor Goodhue provided  
6 to AMS.

7 CHIEF JUDGE STROTHER: Very well. Okay. We're  
8 looking at a new exhibit, 16A, which will be the one and  
9 only Exhibit 16A that appears in the record and on the  
10 website, et cetera.

11 MR. HATCH: Yes, sir.

12 CHIEF JUDGE STROTHER: So I would ask witness  
13 Goodhue to take the stand and remind her that she's still  
14 under oath if that's otherwise appropriate. Does -- Ms.  
15 Goodhue are you ready to explain --

16 DR. GOODHUE: Yes, Your Honor.

17 CHIEF JUDGE STROTHER: -- Exhibit 16A to us?

18 DR. GOODHUE: Yes, Your Honor. So -- so the  
19 reason for Exhibit 16A is there was a mistake in Exhibit  
20 16 which had switched the in shell and shelled prices per  
21 ton and so this Exhibit 16A has two tables. Table one is  
22 the calculations using the corrected prices and table two  
23 is a comparison of Exhibit 16 and 16A. And then Dr.  
24 Hinman before the lunch break had said that he wanted me  
25 to explain the cost per ton for in shell and shelled and



1 how they were calculated.

2 So in table one, you could see that the changes  
3 of the in-shell and shelled prices are swapped as they  
4 should be to be in the correct place. Volume is the same,  
5 shared sales is the same for in-shell and shelled and the  
6 total cost are -- or, sorry, the cost for in shell and  
7 shelled changes because the prices are swapped. And then  
8 when you look at table two dropping down to there, you'll  
9 see that again there's that small difference I discussed  
10 in previously between the total cost between Exhibit 16  
11 and 16A, that's the first line and you can see that there  
12 are comparable small changes in cost for the in-shell  
13 inspection cost in the second line of table two, and the  
14 shelled-inspection cost in the third line of table two.

15 Okay. And so then if I may, Your Honor, is it  
16 all right if I just go ahead and speak to the question  
17 that Mr. Hinman said that he would ask me after lunch  
18 break?

19 CHIEF JUDGE STROTHER: Sure.

20 DR. GOODHUE: Okay. So the text in between the  
21 two tables explains the cost per ton for in-shell and  
22 shelled. What's interesting to me about this is there was  
23 an average price from the Dried Fruit Association, excuse  
24 me, cost, in terms of prices, but an average cost of  
25 inspection per ton of the Dried Fruit Association and

1 there were also -- there's also information from industry  
2 -- a California Walnut Board staff member interviewed,  
3 surveyed a bunch of handlers and came up with prices and  
4 so the cost conversion factor is the ratio of the shelled  
5 price to the in-shell price and that was -- I didn't put  
6 in the exact value, that was 1.46, I believe, and so then  
7 the in-shell price is computed using the cost conversion  
8 factor and the DFA's average cost as well as -- thank you,  
9 I don't have to put on my reading glasses. So basically  
10 the in-shell price is the Dried Fruit -- Dried Fruit  
11 Association price divided by the following inspection and,  
12 Mr. Hatch, could you put parentheses at the end of the  
13 italicized equation after -- yeah, right there. Thank  
14 you. Okay.

15 And so it's the DFA price divided by the in-  
16 shell price -- sorry, that also needs to be deleted. If  
17 you could go up and -- the DFA price/parentheses, take  
18 out where it says in-shell price and the -- and the  
19 asterisk. Thank you.

20 So it's the in-shell price is computed as the  
21 in-shell shared sales plus the conversion factor times the  
22 shelled-share -- shelled-share sales. Okay. So dividing  
23 the DFA price by that expression which is the -- which are  
24 parameters, the shares are reported in the table, then  
25 that provides us with the in-shell price which is \$6.09.

1 And then the shelled price is that cost conversion factor  
2 multiplied by the in-shell price. So those are how those  
3 prices are obtained and again the goal of this exercise  
4 was to integrate information from industry as well as from  
5 the DFA. Okay? And that tells you where the cost are  
6 being incurred by product as a point of information. So  
7 questions? Comments? Your Honor?

8 CHIEF JUDGE STROTHER: Yeah, okay. That  
9 completes your testimony as to Exhibit 16A.

10 Since you're California Walnut Board, I don't  
11 think I need to ask if the Walnut Board's got any  
12 questions, but any questions on this testimony by USDA?  
13 Dr. Hinman seems like an obvious person to start with if  
14 he has any questions.

15 DR. HINMAN: Yes, Donald -- Donald Hinman, USDA.  
16 Yes, so this -- your revisions are clarifiant and your  
17 discussion is helpful and I have no further questions and  
18 I want to thank you for your assistance.

19 CHIEF JUDGE STROTHER: Well, might as well get  
20 it right. Looks to me like the order of magnitude on  
21 these things are about the same, but I don't have to write  
22 the decision. So what I think isn't as important as what  
23 others think and we might as well get it right.

24 Anyone else from USDA? Anyone from the -- on  
25 via Zoom have any questions for this witness? Anyone on

1 the telephone have any questions for this witness? Okay.  
2 Hearing none, I think as far as I know, we can -- well, I  
3 would say I intend to offer Exhibit 16A into the record.  
4 Are there any objections from anyone as to 16A going into  
5 the record? Hearing none, Exhibit 16A is made a part of  
6 the record.

7 Professor Goodhue, I think you can step down  
8 from the virtual stand and we appreciate your testimony  
9 today.

10 DR. GOODHUE: Your Honor, I apologize to  
11 everyone for taking your valuable time. So thank you.

12 CHIEF JUDGE STROTHER: No, not at all. Thank  
13 you for your efforts. We might as well get it right.  
14 We're -- you know, perfection is the enemy of the good,  
15 right? We do the best we can and with the help of the  
16 entire village here, we'll get everything. I appreciate  
17 it.

18 All right. I think the next step is to call Ms.  
19 Donoho back to the stand. I remind you, Ms. Donoho, that  
20 you are still under oath. I hope I have this right. And  
21 we had some further question that folks have agreed to  
22 that USDA could ask a further question -- or I'm not  
23 limiting USDA to one question, but USDA wanted to conduct  
24 some further examination of the Walnut Board witnesses and  
25 you are the representative for that, I think, Ms. Donoho.

1 So shall I ask -- who's speaking for USDA?

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

4 CHIEF JUDGE STROTHER: Okay. Counsel, the  
5 witness is yours.

6 MS. CHILUKURI: Thank you. And, Mr. Hatch, if  
7 you could pull up the ECFR. Again, I'm calling in by  
8 phone. Okay. Great. Thank you. I see that's being  
9 pulled up. And if you could scroll to 984.11,  
10 merchantable walnuts.

11 BY MS. CHILUKURI:

12 Q And, Ms. Donoho, I just wanted to ask you a  
13 question about a couple of provisions in the Code of  
14 Federal Regulations. So turning now to 984.11,  
15 merchantable walnuts, as you'll see, it says that  
16 merchantable in-shell walnuts meaning all in-shell walnuts  
17 meeting the minimum grade and size regulations effective  
18 pursuant to 984.50 and then for shelled walnuts, it says  
19 the same thing, a minimum grade -- that they're meeting  
20 the minimum grade and size regulations effective pursuant  
21 to 984.50.

22 Q So if I understand your proposal, you're now  
23 seeking to eliminate those minimum grade and size  
24 regulations, correct?

25 A Correct.

1 Q Okay. As it relates to just the idea of the  
2 concept of merchantable walnuts, does the board or is it  
3 the board's intent that they want that term to continued  
4 to be used in the marketing order?

5 A I believe without the --

6 Q So --

7 A -- absence -- I'm sorry?

8 Q Yes, so, for instance, there are references to  
9 merchantable walnuts in 984.72 and 984.472 so there's  
10 different forms that refer to merchantable walnuts.

11 A I think the term merchantable would only apply  
12 if those sections -- if at some point down the road the  
13 board chose to revisit the inspections and merchantable  
14 because without -- without the regulations being in  
15 effect, I don't think that merchantable applies.

16 Q Okay. And I understand what you're saying so is  
17 it the board's position that when regulations -- I guess  
18 I'll ask you when regulations are not in effect, then  
19 you're not trying to infer or imply that then all English  
20 walnuts should be considered merchantable, is that  
21 correct?

22 A That's correct.

23 Q Okay. So with those forms now, 984.72 and  
24 984.472, what happens to those reports and forms?

25 A I, you know, I don't have that in front of me.

1 Are you referring to the substandard?

2 MS. CHILUKURI: Mr. Hatch, if you could scroll down  
3 to .72?

4 BY MS. CHILUKURI:

5 Q So, Ms. Donoho, as you'll see, 984.72 refers to  
6 reports of merchantable walnuts handled.

7 A Um --

8 Q Right. I'm just trying to figure out if the  
9 board intends for these reports to continue to have  
10 meaning in the sense that would you want to define  
11 merchantable in another way or not?

12 A No, I don't think so. I understand what you're  
13 referring to now. I think we would want to leave  
14 merchantable then.

15 Q Okay. So merchantable is linked back to the  
16 grade and size standards, is that correct? So if there  
17 are no grade and size standards in place, then  
18 merchantable is not really applicable? Is that the  
19 board's position?

20 A Yes, that is.

21 MS. CHILUKURI: If I could just have one minute.  
22 Okay. Thank you, Ms. Donoho, for your patience and  
23 everyone for your patience. I have no further questions.

24 CHIEF JUDGE STROTHER: Okay. Any other  
25 questions from USDA? Any questions from the Zoom

1 participants? Any questions from the telephone  
2 participants? Okay. With that, I think we already  
3 entered into evidence Exhibit -- Exhibits 18 and 19 if I  
4 remember. If not, I enter them now. Somebody -- somebody  
5 can correct me. 18 and 19 are part of the record. I  
6 don't think there were any further exhibits as a result of  
7 this additional examination.

8 Ms. Donoho, you may step down from the virtual  
9 stand. I think this -- the only thing I think I have left  
10 is to set up a time for transcript corrections and briefs.  
11 Does anyone else have any other housekeeping or other more  
12 substantive matters that we should take up before we get  
13 to that final item? Okay. Seeing and hearing none, Mr.  
14 Jones, my hearing reporter, Ms. Feldman indicated  
15 yesterday that she thought we should have the transcript  
16 by ten business days out. I realize we've added certain  
17 number of hours today. Do you know whether that's still a  
18 good estimate?

19 MR. JONES: I would say yes, it is.

20 CHIEF JUDGE STROTHER: Okay. So and I'm really  
21 serving the participants here. I don't have strong  
22 feelings about what the schedule ought to be and again,  
23 I'm not the one that has to write the decision. I do  
24 think as USDA pointed out that the briefing is more --  
25 that USDA knows what it's going to do with is briefing,



1 probably California Walnut Board too, and this is more for  
2 the public than is participating in this. I guess I will  
3 also say in my briefing, I mean I personally at least and  
4 I think we -- USDA and the Office of Administrative Law  
5 Judges, I mean this briefing can be in the form of a  
6 letter or other comments. It doesn't have to take any,  
7 you know, particular formal -- it doesn't have to be  
8 styled in any particular way, but folks that want to  
9 comment on the -- what's proposed here and on the record  
10 as been developed through this hearing, you're welcome to  
11 do it in writing. No new proposals, no -- no new evidence  
12 in support of any proposal at least without moving to  
13 reopen the record which I -- well, I'll close -- I intend  
14 to close the record at the end of this discussion I guess.  
15 So my thought is that we would have the transcripts by  
16 approximately May 4th as USDA suggested earlier, that two  
17 weeks for transcript corrections seemed about right, so  
18 transcript corrections would be due approximately May 19th  
19 and when I say transcript corrections, we have corrections  
20 -- the intent is really corrections to what the witness  
21 actually did say -- say, so if there's a wrong word or the  
22 pronunciation is incorrect to change the meaning or  
23 something like that. The intent is not to add or to  
24 change the substance of the testimony, but I think folks  
25 will basically know it when they see it and I will allow

1 approximately a week later -- I guess exactly a week  
2 later, May 26th, for objections to transcript corrections.  
3 Any transcript corrections people feel are improper would  
4 be submitted by May 26th. And when we get those in to my  
5 office, we will review those and determine which  
6 corrections to accept or reject based on those filings and  
7 when we're done with that, we certify the transcript under  
8 the regulations.

9 I wasn't sure whether we needed four weeks from  
10 -- from what date. I think USDA talked about four -- one  
11 round of briefs basically and that -- at four weeks, but I  
12 wasn't sure from what date. Ms. Chilukuri, what did you  
13 have in mind? I think you were kicking out something I  
14 said, but I'm not sure what your understanding of what I  
15 said was. I think that folks can begin to work on the  
16 briefs before they have my certification of the  
17 transcript, but I mean we could wait too. I don't want  
18 anyone -- I don't want to delay the process unnecessarily.

19 MS. CHILUKURI: Your Honor, yes, I do agree that  
20 people could start working on the briefs, you know,  
21 relatively quickly or relatively soon. I assume that the  
22 date would be from the date of certification of the  
23 transcript so four weeks from then. So if you feel that's  
24 too long, we're happy to, you know, have another date or  
25 another length of time in mind.

1 CHIEF JUDGE STROTHER: Well, it's not too long.

2 MS. CHILUKURI: But I assume that would trigger  
3 it.

4 CHIEF JUDGE STROTHER: By the certification?

5 MS. CHILUKURI: Four weeks from the date of the  
6 certification.

7 CHIEF JUDGE STROTHER: I'll tell you what, I'll  
8 compromise with you. I think four weeks is fairly long,  
9 but I'm not the one that has to write either the -- any of  
10 the briefs or the decision. I think with the objections  
11 due May 26th, I think four weeks for the briefs probably  
12 from that date is enough. I mean we'll turn around the  
13 certification pretty quickly, and I doubt that there's  
14 going to be a big dispute about many of the transcript  
15 corrections, but let's say a month from the due date of  
16 the objections, so June 23rd.

17 MS. CHILUKURI: That sounds fine to me. Thank  
18 you.

19 CHIEF JUDGE STROTHER: All right. Every --  
20 everyone else okay with the June 23rd -- everyone else  
21 that's on this video conference any way -- Zoom,  
22 telephone, whatever -- June 23rd all right with everyone  
23 for briefs?

24 DR. HINMAN: This is for AMS as well?

25 CHIEF JUDGE STROTHER: Okay. Very well. So and

1 it's unclear to me what service is required by our office  
2 here or what, you know, exactly is supposed to be done  
3 with things in a rule making -- a formal rule making such  
4 as this so I would -- certainly the corrections, any  
5 objections, and the briefs, of course, all should be filed  
6 with the hearing clerk's office here in the usual way set  
7 out in the rules, and I don't think I'm going to go  
8 through that now. It'd be good to certainly send a copy -  
9 - Mr. Hatch, are you the one that -- for things to go to  
10 to make sure they get put up on the website?

11 MR. HATCH: Yes, sir.

12 CHIEF JUDGE STROTHER: Okay. A copy -- send  
13 things to Mr. Hatch -- to Andrew Hatch at USDA.gov and  
14 he'll get everything I think up on the website. Is that  
15 your understanding, Mr. Hatch?

16 MR. HATCH: That is correct. And just for  
17 clarification it's [andrew.hatch@usda.gov](mailto:andrew.hatch@usda.gov).

18 CHIEF JUDGE STROTHER: Yes, exactly so. Get the  
19 dot in there. And we would appreciate to be CC'd I think  
20 to [marisasantana@usda.gov](mailto:marisasantana@usda.gov) and [marilynkennedy@usda.gov](mailto:marilynkennedy@usda.gov).  
21 Those people are in my office. Don't copy -- better not  
22 to copy me directly with things. If anyone needs spelling  
23 on that or whatever, you know, give us a call I guess or  
24 we'll have it spelled correctly in the -- in the  
25 transcript and I don't think I'll issue a separate order

1 on these as I indicated before. So proposed corrections  
2 May 19th, objections to proposed objections May 26th,  
3 briefs June 23.

4 I am not going to make a ruling about reply  
5 briefs. I'm not sure who's jurisdiction it'd come under  
6 as to whether we try -- if someone had a problem and they  
7 moved to file a reply brief or whatever so I'm not going  
8 to say anything about that there. If anyone feels that  
9 there's something improper in an initial process, we'll  
10 that up with some process at the time and I don't know  
11 whether it's me as the administrative -- presiding  
12 administrative law judge or whether it's some part of USDA  
13 that's writing the decision that does that. Does that  
14 seem fair to everybody? I would also suggest, I guess,  
15 that, you know, I would recommend broad email -- broad  
16 emailing around various documents anybody files or submits  
17 just so we don't take a chance on somebody getting left  
18 out and complaining later that they couldn't respond to  
19 something or they didn't have it in time or something like  
20 that, but I'm not going to make any particular requirement  
21 like that. I'm not seeing anyone raising any hands or  
22 asking any questions so anything further at all from  
23 anybody in any form? I don't have my camera on, I'm  
24 sorry. Anything further from anybody that's participating  
25 in this hearing in any way?

1           Okay. With that so I'm -- I think I should  
2 close the record whatever the technical meaning of that is  
3 exactly, with the caveat that the transcript will be made  
4 a final part of the record when I certify it after ruling  
5 on the corrections and objections. And I may have to  
6 issue something further closing the record. I'm just --  
7 I'm not sure about that, but we're done basically with the  
8 evidence here and I'd like to thank everybody, good job,  
9 everyone behaved with professionalism, and I thought it  
10 was an efficient procedure and I really appreciate  
11 everyone's time and it's honor to serve as Judge in this  
12 proceeding.

13           Does anyone have anything further at all?

14           MR. HATCH: Thank you very much, Your Honor, for  
15 your flexibility and allowing us to conduct this over  
16 Zoom. Thank you.

17           CHIEF JUDGE STROTHER: Very kind of you to say,  
18 Mr. Hatch. Happy to do it. USDA? Anybody? California  
19 Walnuts Board? Okay. We'll let you all return to your --  
20 the usual programming. Thank you very much and good day.

21           MS. CHILUKURI: Thank you very much.

22           MALE VOICE: Thank you, Judge. Nice seeing you.  
23 Take care.

24           (Whereupon, at 3:45 p.m., the hearing was  
25 concluded.)

Certificate of Reporter, Transcriber, and Proofreader

Caption of Hearing or Event:

Proposed Amendments - California Grown Walnuts

Docket No.:

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

Place of Hearing:

Washington, D.C.

Date of Hearing:

April 20, 2022

We, the undersigned, do hereby certify that the foregoing pages, numbers 278 through 394, inclusive, are the true, accurate and complete transcript prepared from the reporting by David Jones in attendance at the above-identified hearing, in accordance with applicable provisions of the current USDA contract, and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing.

04/27/22

Date

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 Lori Tackett, Transcriber  
 Heritage Reporting Corporation
4/29/22

Date

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 David Jones, Proofreader  
 Heritage Reporting Corporation
4/20/22

Date

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 David Jones, Reporter  
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