Current and Potential Uses of Federal Marketing Orders

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The purpose of this report is to describe federal marketing orders for agricultural commodities and their current and potential uses. Such information should assist farmers, consumers, and others in understanding the role of marketing orders in U.S. agriculture and in more clearly assessing their benefits and costs.

BACKGROUND

A federal marketing order is a legal instrument issued by the Secretary of Agriculture specifying terms and conditions for the marketing of particular commodities in a given area. They emerged from the chaotic conditions which existed for agricultural commodities in the 1920s and early 1930s. Farm prices were chronically low and unstable. Adequate supplies were not always available to consumers. Farm strikes developed as farmers protested marketing conditions and low prices. In response to these conditions, Congress passed the Agricultural Marketing Agreement Act in 1937 (hereinafter called the Act). This legislation enabled the creation of "ground rules" for the marketing of agricultural commodities backed up by the federal government.

Since passage of the Act, marketing orders have been used to regulate the marketing of milk and of fruits and vegetables. The rules for marketing specified in federal orders include acceptable marketing practices, terms and conditions of sale, and prices. Among other effects, these rules are designed to improve producers' bargaining position relative to buyers of the regulated commodities. Two basic approaches have been taken by marketing orders: i) establishing minimum prices as in the case of milk, and ii) regulating the quantity marketed in various uses, grades, time periods or channels of trade as in the case of fruits and vegetables. Orders achieve their objectives by the regulation of handlers--those who receive, process and distribute the commodities purchased from farmers. Federal orders cannot regulate producers of agricultural commodities directly, but do affect producers through their regulation of handlers. Federal orders do not guarantee producers a market or a particular price. The implementation and design of marketing orders are based upon evidence presented to the Secretary of Agriculture. Once put into effect, orders are binding on all producers and handlers.


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operating in the regulated area.

Federal orders have often been used with marketing agreements since the voluntary nature of agreements typically precludes complete industry compliance. Without complete industry acceptance many of the objectives of the Act could not be accomplished.

**FEDERAL ORDER BASICS**

**Commodities Covered**

As presently written, the Act and its amendments limit the number of commodities that can be regulated by federal marketing orders. Subject to certain exceptions and restrictions, the following commodities can be regulated by marketing orders if producers (farmers) so choose:

1. Milk
2. Tobacco
3. Hops
4. Peanuts
5. Honeybees
6. Naval stores
7. Fresh vegetables
8. Fresh fruits
9. Turkeys and turkey hatching eggs
10. Filberts, almonds, pecans, and walnuts.

**Scope of Orders**

The number of marketing orders and the quantity of products marketed under them have greatly expanded. There are now a total of 93 federal marketing orders, 46 fruit and vegetable orders, and 47 milk orders. More than 120,000 milk producers market in excess of 41 billion pounds of milk under federal orders. This amounts to 80 percent of the Grade A milk produced in the United States and 66 percent of all milk production. The gross value of milk sold under federal orders exceeds $7.5 billion. The location of federal orders is shown in Figures 1 (milk) and 2 (fruit, vegetable, and nut).

In addition to federal marketing orders, 15 states have either general enabling legislation for the establishment of marketing orders or have legislation covering particular commodities. For example, California has 33 marketing orders or programs in operation for various commodities under its state marketing act. In addition, 17 states have legislation authorizing the establishment of minimum milk prices at the producer level and other states have regulations concerning resale pricing or trade practices (Figure 3).

**Objective of Orders**

The objectives of marketing orders mentioned in the Act are given below. The objectives are quite broad and allow much flexibility in the design of order provisions.

1. To maintain orderly marketing conditions. Orderly marketing can be expected to:
   a) raise farm prices and stabilize farm income,
   b) assure consumers of a steady supply of products,
   c) avoid unreasonable fluctuations in farm and retail prices.

2. To establish standards of quality and maturity and grading and inspection requirements.

In recent years the necessity and desirability of many types of regulation including marketing orders, have been questioned. The current marketing order controversy largely reflects the desirability different groups place on these objectives and their views on the necessity of federal government help in achieving them. For example, farmers would probably place a higher weight on achieving higher prices than would consumers. Consumers might place more importance on establishment of quality standards than farmers. Thus, an evaluation of marketing order performance depends heavily upon how one views the objectives of this marketing institution.

Despite differences in how different groups assess orders, some conclusions about their effects can be drawn. In most cases, marketing orders have:
Figure 1. Milk marketing areas under federal orders, January 1, 1979.
Figure 2. Fruit, vegetable, and nut federal marketing agreements and orders, May 1, 1974.
Figure 3. States regulating fluid milk prices, January 1, 1977.
1. Created more orderly marketing conditions and stabilized prices;
2. Provided some price and income improvements for producers and some increase in consumer prices;
3. Transferred some market power from processors to producers;
4. Improved market communication and information;
5. Improved grades and standards.

These impacts have contributed to the welfare of consumers, processors, and producers to one degree or another over the 40-year history of the Act. The level and incidence of benefits change over time, however, as do their associated costs. For this reason periodic reconsideration of the necessity and design of marketing orders is appropriate.

Techniques Used to Achieve Order Objectives

Generally speaking, the technique of simply restricting total supplies to increase producer prices and incomes has not been used in marketing orders. One reason for this is that the power to regulate agricultural producers directly is not granted under marketing orders. As a result, the objectives of orders have been approached through several other techniques. These might be classified as follows:

1. Developing more acceptable trade practices and enforcing compliance. In both the fruit and vegetable and the milk marketing orders, continual efforts have been made to establish rules of business operation which eliminate doubtful or unethical business practices among the parties to the order.

2. Developing more acceptable products. Especially in fruits and vegetables, emphasis has been placed on quality standards, uniformity of packs and packaging, and the like. Sometimes a minimal quality standard is established and products below this minimum are not salable.

3. Developing promotion and advertising approaches for the purpose of stimulating consumption. A 1971 amendment to the Act authorized promotional, educational, and research programs on an order-by-order basis when approved by producers. These programs are financed by deductions from producer payments. Producers in 17 federal milk orders have approved a 5 cent per hundredweight deduction for milk promotion and 12 of the fruit and vegetable orders have advertising programs. In addition, many states have programs to promote agricultural products, 23 in the case of milk. In total, an estimated 917 groups (commissions, councils, boards, and voluntary groups) spent $162 million on the promotion of agricultural products in 1973.

4. Developing regulations to smooth out the flow of products, both seasonally and from one year to the next. For both milk and fruits and vegetables, regulations have evolved which attempt to reduce the widely fluctuating levels of supplies and encourage production which more nearly fits consumption patterns. Special seasonal pricing plans for milk and specifying a shipping schedule for fruits and vegetables are two such regulations.

5. Establishment of import quotas. When a commodity becomes regulated under a marketing order, limitations may be imposed on importations of that commodity into the country.

6. Separating the market of a product into parts and controlling the amounts offered for use in each part so that greater total returns can be secured. The market for many commodities is made up of "pieces" which can be separated one from the other. Some of these "partial outlets" are highly sensitive to price changes; others are not. In the case of milk, the product can be used as fluid milk, for butter, for cheese, for ice cream and for other dairy products. The amount of fluid milk demanded is generally considered relatively insensitive to price changes. The milk marketing order sets a higher price for this use and a lower price for the other uses. In walnuts, the product can be sold either "in-shell" or "shelled-out." Consumers of walnuts in the shell are less price
sensitive, so amounts that are sold for these uses are restricted, resulting in a higher price without a proportional drop in sales. The excess amounts are then put into the "shelled" uses where larger amounts can be moved with proportionally less price reduction than in the in-shell market.

This process of splitting a market into separate segments and using separate prices or volumes for each is not unique to commodities covered by marketing orders. Many firms throughout the general economy successfully employ this marketing strategy. Some of the many market splits attempted under marketing orders are:

(a) Into different uses for the same farm product such as with milk and walnuts.
(b) Into different qualities - used widely in fruits.
(c) Into different places such as areas of the country or domestic and foreign - used in fresh fruits and vegetables.

If the markets can be effectively separated so that buyers cannot or will not jump into another sector to obtain their supplies, and if the markets are significantly different in their reaction to price level, then total returns may be greater from this approach.

The Effectiveness of Orders

Experience under marketing orders has given some guide as to what factors contribute to their effectiveness. These factors can be broadly grouped into three classifications: (a) those related to demand, (b) those related to supply, and (c) those affecting administration of the orders. The following demand factors are conducive to order effectiveness:

---No unregulated commodities which are close substitutes for the regulated commodity. The availability of unregulated commodities would mean that buyers could substitute commodities for the regulated commodity. This situation could adversely affect sales of the regulated commodity.
---Two or more buyers or outlets for the commodity which are substantially different in their reaction to price changes. Thus, there is the possibility of at least temporarily raising income by partitioning the market and using a multiple pricing system.

The following supply factors are conducive to order effectiveness:
---Production concentrated in a compact area or in the hands of relatively few producers and specialized production. Regulation of production and administration of the order are made easier under these circumstances.
---Perishable commodity. This factor makes regulation of supply easier by eliminating the opportunity for handlers to store the commodity, enter the market later, and adversely affect price.
---High capital investment required. This means getting in or out of the industry in response to short-run price changes is more difficult.
---At the market regulation point, the raw product must be homogenous enough to permit shifting freely among uses of the commodity.

The following factors facilitate administration of the orders:
---A "funnel" in the marketing channel through which the regulated commodity must flow. A restriction in a link in the marketing chain where there is a small number of large firms to be directly regulated makes administration easier and less costly.
---A background of successful cooperative marketing and a desire for "self-help." Large, cohesive cooperative organizations can provide the organizational and communication effort with producers needed to make orders workable.

OPERATION OF FEDERAL MARKETING ORDERS

Instituting an Order

The following steps are involved in instituting an order:

1. Request for action - Although the Secretary of Agriculture may initiate action, this step is usually taken by cooperatives.
The request usually comes after intensive industry study of the problems involved. Usually, a proposed marketing order accompanies the request for federal participation.

2. Preliminary investigation—Marketing specialists meet with industry personnel and make a preliminary investigation of marketing conditions to determine whether a marketing order appears appropriate.

3. Public hearing—After due notice, a public hearing is held where all interested parties can testify on all relevant aspects of the proposed order.

4. Briefs—Interested parties are afforded the opportunity to file written briefs and proposed findings and conclusions within a specified period after the close of the hearing.

5. Recommended decision—A recommended decision is filed and published by the USDA in the Federal Register. It contains the terms of the proposed order based on evidence presented at the hearing.

6. Exceptions—Interested parties may file exceptions to the recommended decision.

7. Final decision—The Secretary of Agriculture issues the terms and provisions of the suggested marketing order in the final decision.

8. Producer approval—The suggested marketing order is submitted to a vote of approval by producers.

9. Issuance of order—If sufficient producers approve the marketing order, the Secretary issues the order to become effective on a specified date.

The procedures for amending an order are basically the same as above. The Secretary must terminate the order whenever (1) the order or its provisions no longer serve the declared policy of the Act, or (2) a majority of the producers producing at least half of the order supply request termination.

**Administration of Orders**

Administrative costs connected with the operation of all federal orders are financed by assessments on handlers. In the case of milk orders, the Secretary appoints a market administrator to administer the terms of the order for each market. The market administrator has a staff to assist him in (1) administering the terms of the orders, (2) receiving, investigating, and reporting on alleged order violations, (3) recommending amendments to the orders, and (4) making rules and regulations to accomplish the terms and provisions of the order.

The terms of federal orders for fruits, vegetables, and other commodities are administered by a committee of growers, handlers, or both. Members of the committee are normally nominated by growers and handlers and appointed by the Secretary. Their term of office, powers, duties, and obligations are stated in the order. The committee prepares a proposed annual budget and rate of assessment for the Secretary's approval. The committee is then responsible for (1) the expenditure of all money collected and for keeping appropriate records and making audits, (2) making recommendations relative to shipments, (3) analyzing crop and market conditions and recommending appropriate regulations, (4) investigating alleged violations of the order and making inspections, and (5) conducting other activities necessary for the operation of the order.

Both civil and criminal proceedings can be taken to force compliance with federal order provisions. In addition civil or criminal charges can be brought in cases alleging fraud, falsified records, contempt of injunctions requiring compliance with an order, and similar violations.

**Specific Order Provisions**

Milk marketing orders and orders for fruits and vegetables contain different provisions to achieve their objectives. These will be discussed separately. Marketing order rules were not radical departures from industry practices at the time orders were first instituted. In fact, orders were mostly extensions of then current practices with
the force of law. In many cases the force of law was required to protect farmers from the more economically powerful processors.

**Milk Marketing Orders**--Marketing orders for milk regulate handlers who make sales in a specified marketing area. Handlers who are regulated by the order are required to pay established prices according to the classification or use made of milk they receive. Producers receive a blend or uniform price for their milk based either on the utilization of milk in the various classes for the market as a whole or for the handler to whom they ship. Two of the key devices used in milk marketing orders are:

1. **Classified pricing plan**--A system under which handlers are required to pay for milk according to the use made of it. Most orders specify three use classifications: fluid, nonstorable manufactured products, and storable manufactured products. The minimum price provisions of this plan are designed to equalize product costs among handlers.

2. **Equalization pool**--Milk marketing orders specify two systems of pooling returns among producers. One system, individual handler pooling, provides for the distribution of producer returns on the basis of the utilization of the buying handler. The other system, marketwide pooling, is more prevalent and provides for the distribution of producer returns on the basis of the utilization of milk in the market. Under both systems of pooling, the objective is to equalize returns among producers regardless of how each producer's milk is used (subject to adjustments for location, butter-fat test, volume and seasonality of production). Thus, while handlers pay for milk on the basis of the use made of it, producers receive a uniform price which is a blend of the handler class prices.

**Fruit and Vegetable Orders**--Marketing orders for fruits, vegetables, and commodities other than milk may contain one or more of the following types of regulatory activities:

1. **Regulation of quality**--Specification of grade, size, quality or maturity of commodity are used. This activity is justified under the consumer protection and orderly marketing purposes of the Act. If such standards are not used to artificially restrict supply, they may benefit both producers and consumers.

2. **Regulation of quantity**--The quantity of commodities which handlers may market during a specified time is established. Volume regulations may (1) limit the total amount shipped during a season, (2) limit the amount marketed through a particular outlet, and (3) regulate the rate of flow to market during the season. These activities fall primarily under the orderly marketing and price improvement purposes of the Act. Volume regulations, aimed at smoothing out the flow of commodities to market, dampen wide price fluctuations within the season, and such market coordination may be beneficial to both producers and consumers. Volume restrictions on handlers, which limit total marketing during the season, are covered by the price improvement purposes of the Act. These regulations can improve price and incomes of producers subject to economic and legal limitations.

3. **Reserve pools**--This involves establishing reserve pools for commodities and equitably distributing the returns from the sale of such commodities. Pools fall under the orderly marketing purposes of the Act.

4. **Distribution of returns**--The extent of surplus production is determined and a method provided for the burden of surplus disposition being equalized among producers and handlers.

Thus, each of the activities, permissible under fruit and vegetable orders, attempts to achieve one or more of the objectives of the Act.

**POTENTIAL EXPANSION OF COMMODITIES COVERED BY ORDERS**

What are the possibilities of using mar-
marketing orders to regulate the marketing of commodities not now authorized? What commodity characteristics and existing marketing structure are associated with effective market order programs? In this section, these questions will be discussed for two important commodities: broilers and hogs.

Broilers - In terms of factors associated with order effectiveness, broilers are characterized as follows:
1. Broilers have close unregulated substitutes in consumption.
2. The market for broilers is nationwide. Commodities from one producing area cannot be effectively separated from those of another.
3. There are not several products of broilers with different elasticities of demand.
4. Production is concentrated in relatively compact but widely dispersed production areas.
5. Broilers are relatively perishable although frozen storage is possible.
6. Broiler production is a specialized and relatively large scale operation; however, entry and exit in the industry are relatively easy. Adjustments to price changes can be made in a relatively short time by producers.
7. Producer organizations that might institute and guide such a program are not particularly strong or unified in their actions, and much production is on a vertically-integrated basis.

Thus, broilers portray few of the characteristics typically associated with effective regulation. However, if modest price objectives are sought and the primary interest is in stabilizing prices, creating orderly marketing conditions, or expanding demand, some success might be obtained if an order was put into effect on a nationwide basis. Product advertisement and promotion may be used to obtain modest price gains or expansion of consumption. Price advantages may accrue from regulation of quality through grading and standardization. In setting price objectives, short and long run consumption response must be considered, inasmuch as other meats substitute for broilers. A federal order would not eliminate the relative cost advantages one area has over another or make broiler production equally attractive among regions.

Hogs - In terms of factors associated with the effectiveness of orders, hogs are characterized as follows:
1. Hogs have close substitutes in both production and consumption.
2. The market for hogs is nationwide. Production in one area cannot be effectively separated from other areas.
3. The different products of hogs generally do not have different price elasticities of demand.
4. Production is not concentrated in compact areas. Hogs are grown commercially in much of the United States.
5. Products range from perishable to storable, but most end products are semi-perishable.
6. Entry and exit of producers can take place in less than one year. This occurs because hogs can be produced efficiently on a rather small scale, and responses to expected price changes can be made quickly by feeding to heavier or lighter weights.
7. Cooperatives or producer organizations market only a minor part of the hog crop. There have been relatively few successful marketing programs instituted by producer organizations.

The conclusion is that for hogs there is a general absence of factors associated with effective orders. To smooth out the flow of hogs to market would require modification of seasonal price differentials to farmers, such as has been done in the dairy industry. To raise prices by restricting total supplies would be possible only through a nationwide order. Hogs are produced in every state, hence restricting marketings in one would create an incentive for increases in another. To get agreement concerning equitable differentials for various hog producing areas under even a "Corn Belt order" would be difficult. In addition, consumers would be expected to substitute other meats for pork
if the price of pork increased relative to other meats.

Pork, unlike milk or walnuts, cannot be divided readily into various, nonsuitable end products. Production and marketing of pork has not yet reached the stage where hogs can be separated into quality groups distinct enough so that consumers recognize the quality classifications.

Although trade practices could probably be improved, present regulatory agencies are already able to control many kinds of undesirable practices. Cooperative marketing agencies have been set up and most farmers have several good alternative markets at which to sell their hogs. More acceptable products might be developed at a faster rate if additional funds were allocated for research and development. More money spent for promotion and advertising under a marketing order might result in some increased consumption of pork, but it would probably be at the expense of beef which is also produced by some of the same farmers that raise hogs.

**Other Commodity Potentials**--The degree to which certain other commodities possess characteristics associated with effective order operation is shown in Table 1. The wide differences in commodity charac-

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<th>Characteristic</th>
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<th>Eggs</th>
<th>Turkeys</th>
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<td>End uses of markets with different price elasticity</td>
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<td>Concentrated and compact production area</td>
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<td>Perishable regulated products</td>
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<td>Homogeneous products</td>
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H = high, M = medium, L = low.
teristics illustrate the need for critical analysis in the process of considering the institution of an order. These differences in commodity characteristics also indicate the extent to which the several techniques can be used in regulating marketing. Whether an order can actually be used effectively depends upon many factors including producer support and quality of administration. Furthermore, if orders are applied without attention to long-run consequences, several undesirable effects may occur, such as loss of market or development of burdensome surpluses. It should be pointed out that some of the commodities shown in Table 1 are under other programs which may be more effective than orders in achieving order objectives.

FOOTNOTES

1/ Marketing agreements were authorized under the 1937 Act. They are contracts entered into by the Secretary of Agriculture and handlers of a particular commodity. The agreement covers a specific commodity and geographical area. Unlike an order, however, handler participation in an agreement is voluntary. There is currently only one agreement in effect (peanuts) without a complementary marketing order.

2/ A marketing order cannot apply to peanuts produced in more than one of the three principal production areas.

3/ But not the product of honeybees.

4/ But not the product of naval stores other than refined or partially refined oleoresin.

5/ Only asparagus can be regulated for canning or freezing.

6/ Orders cannot be used for apples in areas other than in Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio. Orders do not include fruits for canning and freezing other than olives, grapefruit, cherries, pears, cranberries, and apples produced in the states named above except Washington, Oregon and Idaho. Although the above fruits intended for canning and freezing purposes are subject to regulation, the products thereof are not.

7/ Orderly marketing is defined as the maintenance of a price structure and marketing conditions that are conducive to the uninterrupted flow of product to market in the desired quantity and pattern.

8/ The costs of producing and serving the fluid milk market are higher than for other uses of milk. This factor also contributes to the higher price for this product use.

9/ In almost all cases, either two-thirds approval by voting producers or approval by producers supplying two-thirds of the total market supply is required to institute an order.

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