

COLORADO MARKET ORDER REVIEW

Enabling Legislation. The Marketing Act of 1939 (CRS 35-28-101 et al) is the enabling legislation which allows for the formation of market orders in Colorado. Market Orders are established by the Commissioner of the Dept. of Agriculture after it is determined that such an order will fulfill one or more of the intended purposes specified in the law and the producers of the specific commodity have voted in favor of the creation of the order. The purposes for which an order can be created are as follows:

1. To allow producers to more effectively coordinate the marketing of their commodity with market demands.
2. To establish the orderly marketing of commodities.
3. To provide for uniform grading and preparation.
4. To provide for the development of new and larger markets.
5. To eliminate unfair competition and waste.
6. To restore and maintain adequate purchasing power.

There are currently eight active market orders in the state. These market orders and the year of their establishment are as follows: wheat (1958), milk (1963), corn (1987), apple (1969), dry bean (1988), sweet corn (1988), potato, Area III (northeastern Colorado, 1941), and potato, Area II (San Luis Valley, 1941). (The broccoli order is currently under suspension since producers stopped producing broccoli within the boundaries of the order).

Creation of a Market Order. A market order is only created when the Commissioner determines that the development of an order will help to carry out one or more of the purposes stated above. When the Commissioner makes such a determination (this is done through the public hearing process), a referendum is held in which all affected producers are eligible to vote. There are two types of orders which can be created: refundable and nonrefundable. If the growers wish to establish a nonrefundable order (growers cannot request a refund of the assessments they have paid), the referendum must be passed by at least two-thirds of the growers who vote and they must represent at least two-thirds of the commodity produced by all who voted in the election. If the order affects handlers, it must be approved by at least fifty percent of the handlers voting and they must represent at least fifty percent of the commodity covered in the order. Milk, sweet corn, wheat, both potato orders, and apple are such orders.

A refundable market order can be created (i.e., assessments are collected but will be refunded upon request by the producer) if over fifty percent of the producers voting are in favor of the referendum. Corn and dry bean are refundable orders and a portion (one-half) of the wheat assessment is refundable.

Market Order Functions. The main reason that market orders are created is to improve the economic viability of their participants. The major activities that are conducted by market orders in Colorado are:

1. Research to assist growers to more effectively and economically produce the product and to develop additional uses for the product;
2. Promotion and marketing programs to help maintain and/or expand markets;
3. Inspection and regulation to make sure that only products of a certain quality are shipped from the growing area;
4. Education of consumers so they are aware of the importance and benefits of the product; and
5. Monitoring of industry pricing to help assure that unfair and predatory pricing practices do not occur.

Boards of Control. Each market order has a Board to administer the order in accordance with its terms and provisions. Board members are nominated through an election by the members of the order and appointed by the Commissioner. They serve without compensation but are paid for their actual expenses while performing their duties as Board members. Each board submits an annual budget to the Commissioner for approval and oversees the collection of the assessment, recommends specific amendments to the Commissioner regarding the market order, recommends administrative rules and regulations, reports violations of the order to the Commissioner, and provides overall guidance in seeing that the purpose of the market order is being met.

Contents of Market Order. Each of the eight market orders has its own specific marketing agreement or order, which has been issued by the Commissioner. Each of these orders defines the allowable activities that can be carried out by the market order. They are each unique to their commodity and the needs of the particular industry. Some of the important provisions which are allowed under the Market Order Act include:

1. The establishment of uniform grading and inspection and quality requirements products must meet before being sold outside of the market order region.
2. The establishment of plans for advertising and promotion.
3. Provisions for price posting and requirements that products sold must follow the prices filed.
4. The establishment of research programs for the improvement of production practices, insects or disease control, marketing, processing or any other research that would benefit the agricultural commodity.
5. Provisions for the limitation and prevention of unfair methods of competition.
6. Provisions concerning how products that cannot be marketed may be disposed.
7. Provisions for establishing processing plants.
8. Provisions regarding the labeling, marking or branding of products.

Although there are other provisions which can be included in market orders (see 35-28-108), these are the provisions upon which our market orders are most focused. Each specific order will contain and be involved with only those provisions which are of importance to the particular commodity for which it is responsible.

Assessments and Fees. Funds to carry out the activities of each market order are collected entirely from the members of the order. When a market order referendum is approved, a maximum assessment rate is established. The Board of Control annually determines the assessment rate for the year. This is set on a per bushel, carton, or hundredweight rate. For example, wheat and corn each collect \$.01 per bushel while potatoes collect \$.04 per hundredweight. The Commissioner has granted the authority to collect assessments to each individual order. Annual budgets vary greatly between the orders with three orders in FY98 collecting over \$750,000 (i.e., wheat, corn, and Area II potatoes) and two collecting under \$10,000 (i.e., sweet corn and apple).

Violations and Enforcement. The enforcement of the provisions of the market orders is the responsibility of the Commissioner. Typical violations include failure to pay assessments (possibly any order), shipment of below grade product or shipment without proper inspection (potato or sweet corn orders), or illegal pricing of product (milk). The department acts upon all complaints; however, actual violations are quite rare. Compliance usually occurs when someone is informed that they have violated the act. When a violation is suspected (we are usually informed by the order that a suspected violation has occurred), a hearing is scheduled with a hearing officer appointed by the Commissioner. If a violation is found to have occurred a civil penalty of up to \$1000 per violation can be assessed. Such penalty may be suspended with the condition that no additional violations occur within a given period of time. If a criminal violation is to be pursued the complaint must be brought to district court to be heard (criminal complaints are a very unlikely scenario).

Termination or Suspension of an Order. The Commissioner can suspend or terminate an order whenever he finds that an order (or provision within the order) is not meeting its intended purpose. If termination of an order is requested by more than 50 percent of the affected producers or by those who represent over 50 percent of the production, he is required to terminate or suspend the order for a specified period of time.

Responsibility of Commissioner. The Commissioner, or his duly authorized representative, is responsible for all aspects of the market order: creation, amendments, appointing the board, approving the budget, approval of rules and regulations, setting of standards, determining violations and penalties, and suspension or termination of the order. The administrative committee (Board of Control) recommends and the Commissioner approves actions related to each order.

Summary of Colorado Market Orders

Apple

The apple market order represents some 147 growers in Delta and Montrose counties. Their Board is composed of five growers and two handlers. In 1998 they doubled their assessment to \$.10 per bushel. In FY98 they raised \$19,000 but because of a good crop and higher assessments they have budgeted approximately \$40,000 for the current fiscal year. Last year 19 percent of their budget went to research and 63% to promotion. They have a reserve balance of a little over \$23,000. Because of doubling the assessment in 1998, the Apple Marketing Order was able to "bank" a considerable reserve to carry them over into the new marketing year. Now they can develop a marketing plan in advance of the season. The Colorado Supreme Program, carried out with the Colorado Dept. of Agriculture, has returned more than \$1.5 million to growers over the past 10 years. Although the Colorado Supreme Program is not a marketing order program, per se, the marketing order provides an efficient structure to carry out the program.

Corn

This statewide order represents approximately 3,600 growers. Their assessment is \$.01 per bushel and they had a budget of \$891,500 in FY 97-98 and have a proposed budget of \$1.12 million this year. Their board consists of 11 producers. This is a refundable order and they anticipate about 34% of their income will be refunded. Of their available funds 12.7% is allocated for education, 19% for market development, and 13.8% for research. Environmental stewardship, policy development, and special activities account for another 20% and operating and personnel costs account for the final 27%. Their reserve is about \$444,000. Over the past 12 years they have focused much of their activity on developing new industrial uses for corn.

Dry Beans

This is a statewide order that represents 1,095 growers. Their board is composed of six producers and three handlers. The assessment is \$.02 per hundredweight for handlers and \$.04 per hundred weight for producers. Their 1998 budget was \$127,000 and their anticipated budget for 1999 is \$162,500. This refundable order has annual anticipated refunds of about 1.5%. Their proposed budget will spend 38% on research (CSU) and 39% on promotion. They pay an annual membership to the National Dry Bean Council of \$25,000. This group promotes and develops export markets. The dry bean order also supports a national domestic dry bean promotion program. Their current reserve is \$90,000.

Milk

This is a statewide order that represents all milk processors (approximately 75-80) in the state (this is not a producer order) and makes sure that milk coming into the state follows the regulations of the order. Their assessment is set at \$.023 per hundredweight and they raise approximately \$278,000 per year. The board is composed of five handlers. The main function of this order is to see that milk pricing is carried out in a fair and even manner. Nearly all of their expenditures go for personnel (\$184,000), mainly auditors, to

make sure that posted prices and the provisions of the order are being followed. They have also budgeted \$26,000 for legal counsel. They have a reserve balance of \$312,000.

Potato – Area II

This market order represents some 226 potato growers in the San Luis Valley. Their assessment is currently at \$.05 per hundredweight. The market order board is composed of seven producers and five handlers. In FY 98 their income totaled over \$960,000. Their proposed income this year is estimated at about \$713,000. Expenditures for this year, however, are set at about \$900,000 to utilize the much higher than expected income from last year and to use some of their \$125,000 reserve fund. Of this amount they have budgeted 67% for marketing and promotion, 18% for research (funds go to the CSU experiment station in the SLV), and 19% for administrative costs. The inspection program and market order regulations help assure that only quality potatoes are shipped from the area. They also maintain a very active consumer and buyer advertising program, since practically all potatoes grown in the SLV are for the fresh market.

Potato – Area III

This order represents some 51 growers in northeastern Colorado. Their assessment is \$.04 per hundredweight. The board is composed of five growers and four handlers. Income last year was around \$91,000 and is expected to be \$99,000 this year. In both years expenses were approximately \$130,000 as they are trying to spend down a reserve of over \$140,000. Research comprises 36% of the budget, promotion 16%, and administration about 48%. In northeastern Colorado, approximately 50% of the potatoes are grown for the fresh market and 50% for chipping and other processing uses. Because there are two marketing channels for Area III potatoes, elaborate tracking systems are in place to ensure that those potatoes destined for processing are sent to the proper processing facility and are not "dumped" on the fresh market. Area III also operates under the same inspection provisions, setting their own quality standards. They also contribute to the SLV's advertising campaign in markets where fresh potatoes are sent.

Sunflower

Created in March of 2001, the Colorado Sunflower Administrative Committee (CSAC) collects 3 cents per hundredweight on all types of sunflower produced in Colorado. Three separate markets exist for sunflower; oil, confection, and birdseed. The assessment is used for sunflower research, promotion, and educational activities. With an annual budget of nearly \$15,000, approximately 25% is invested in research with Colorado State University. Another 30% is invested with the National Sunflower Association for research, promotion, and education, with the remaining \$5000 used for operating expenses. None of the operating expenses are used to pay salaries. In 2009, refund requests totaled 1.5% of collected revenues. The sunflower Board is comprised of 8 voting members and 8 alternates. There are 4 districts in Colorado, with each district represented by 2 members and 2 alternates. Board members are Colorado sunflower producers.

Sweet Corn

The Sweet Corn Order is by far the smallest order representing 44 growers in Delta and Montrose counties. Their board is composed of four producers and one handler. They have an assessment of \$.01 per bushel and income last year of slightly over \$4,000 and income this year projected at about \$6,500. Their reserve in FY 98 was \$17,300. They have budgeted expenditures for this year of \$18,641, which will leave them with a reserve of \$4,962. Research will account for 37% of these expenditures, the European Corn Bore Trapping Program is 47% and administration about 8% (another 8% will go to the reserve fund). This order also has an inspection and regulation program that helps to assure that only quality products are shipped from the area.

Wheat

The Board is composed of nine producers who represent the different wheat producing regions. The market order covers all of Colorado, except the San Luis Valley, and over 90% of the wheat produced in the state. Approximately 5,400 growers are represented by the order. In 1997 they collected \$750,000 on a \$.01 per bushel assessment. Of this one cent, half is refundable and half is non-refundable. Their proposed budget for the current fiscal year is \$895,000. They currently have a reserve of \$65,000. Approximately twenty percent of their budget is spent on research (primarily at CSU), twenty-nine percent on personnel and operating, and fifty-three percent on marketing and education. Since some 80 percent of Colorado wheat is exported, much of their effort is on developing international markets (i.e., hosting foreign buying missions; supporting U.S. Wheat Associates). They also played an important role in helping to fund the development of a variety of wheat resistant to the Russian Wheat Aphid.