BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA; PROPOSED WEEKLY LEVELS OF VOLUME REGULATION FOR THE 1990-91 SEASON	DOCKET NO. FV-90-174PR

COMMENTS OF THE DEPARTMENT OF JUSTICE

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By notice dated September 6, 1990, the United States Department of Agriculture ("USDA") requested comments on the need to regulate the quantity of fresh California-Arizona navel oranges in the 1990-91 season.1/ The Navel Orange Administrative Committee has proposed for the 1990-91 season weekly shipping schedules and weekly percentage allocations among districts, as well as the dates for the onset and duration of volume regulation. This proposed regulation has been published by the USDA as a proposed rule. These comments address the need for any regulation of fresh California-Arizona navel oranges and analyze the form of regulation contained in the proposed rule to govern the 1990-91 season.2/

1/ 55 Fed. Reg. 36653.

2/ A relatively short period has been provided by USDA for comments. Accordingly, the Department of Justice may seek to file supplemental comments to elaborate upon and further support the analysis and conclusions set forth in these comments.

POSITION OF THE DEPARTMENT OF JUSTICE

The Department of Justice ("the Department" or "DOJ") urges USDA not to impose volume regulation in the 1990-91 navel orange season. The evidence is that prorate imposes continuing costs on society by increasing the price of domestic fresh navel oranges above the level that would prevail in the absence of volume regulation, as well as by inducing wasteful production of navel oranges. Prorate does not increase long-run grower returns above what growers would receive absent volume regulation. The evidence as to whether there are any price stabilization benefits from the use of prorate is ambiguous at best, and likely to be unpersuasive. In contrast, the costs to society imposed by prorate are clearcut. Finally, although it is unlikely that prorate provides any risk reduction to growers, it is clear that there are many free market alternatives available that can reduce growers' risk. The Department's analysis indicates that ideally the volume control provisions of the Order should be terminated. We respond, however, to the September 6 notice requesting comments on proposed regulation for the 1990-91 season.

The policy statement of the Navel Orange Administrative Committee, as described in the September 6, 1990 notice, does not provide a basis for implementing volume or size controls in the California/Arizona navel orange industry in 1990-91. Indeed, there is no justification in the notice for limiting the sale of fresh navel oranges to less than all of the coming season's crop beyond a general statement that volume controls

"may" be needed to assure orderly marketing. Imposition of quantity controls at this time, especially in view of the absence of evidence indicating that suspension of volume regulation has resulted in disorderly marketing conditions, is unwarranted. Since the Act does not mandate the use of volume controls but simply allows the Secretary to impose them when their use would effectuate the purposes of the Agricultural Marketing Agreement Act, the Secretary should exercise his discretion to allow the market to operate without regulation in the 1990-91 season. Such a result is consistent with sound economic principles as well as with the experience gained in non-prorate periods in the recent past.

DISCUSSION

I. THE STATUTORY BASIS FOR REGULATION AND THE PROPOSED RULE

Pursuant to Marketing Order 907, as amended, 7 C.F.R. § 907 ("the Order"),3/ which authorizes regulation of the handling

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3/ The Secretary of Agriculture is empowered by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. §§ 601 et seq. ("AMAA" or "the Act"), to regulate the handling of a broad range of agricultural commodities. Under the Act, "marketing agreements" and "marketing orders" are the basic mechanisms through which the Department of Agriculture promotes the Act's policies. The Act authorizes handlers, with the consent of the Secretary of Agriculture, to enter into marketing agreements that are exempt from the antitrust laws and cover many significant aspects of the handlers' business. The Secretary of Agriculture is also authorized to issue marketing orders, which are regulations that govern the activities of all specified handlers of a particular product.

of navel oranges grown in Arizona and designated part of California, USDA has published a proposed rule to implement the Order. Essentially, the proposed rule seeks to limit the quantity of fresh navel oranges that California and Arizona growers will be allowed to sell to American consumers during the 1990-91 orange season.

The Order and any rules issued pursuant to it will bind all handlers, including those who do not wish to participate in the agreement. Thus, the proposed rule would impose mandatory restraints on the quantity of fresh navel oranges that may be lawfully marketed by all orange growers in Arizona and designated part of California.4/

4/ Pursuant to the Order, on July 10, 1990, the Navel Orange Administrative Committee ("NOAC") adopted a marketing policy on which the proposed rule is based. NOAC estimated the total navel orange crop in the coming season and each individual handler's share of that total (a handler's percentage share of the total industry production is that handler's prorate base). NOAC has also recommended a schedule, specifying for each week of the season the maximum quantity of fresh navel oranges that the industry may legally make available to United States consumers; that schedule is the centerpiece of the proposed rule. During each week covered by the schedule, an individual navel orange handler may not market domestically a quantity in excess of his or her prorate share of the weekly maximum for the industry (i.e., that handler's prorate base times the industry maximum for the given week). Exempt from the regulations are oranges for export, used for charitable contributions, or those shipped by parcel post or express.

Whether the Secretary may implement the navel orange marketing order in the manner set forth by the proposed rule requires a determination that such action is likely to promote the Act's policies. 7 U.S.C. §§ 608c(4), 608c(16)(A). As these Comments will demonstrate, the proposed rule will not only fail to effectuate the policies of the Act, but may, in fact, serve to defeat those policies.

Three of the stated objectives of the Act are of particular relevance to the issues raised by the proposed rule:

> [T]o establish and maintain such orderly marketing conditions . . . as will establish . . . parity prices . . .

7 U.S.C. § 602(1).

> To protect the interest of the consumer by (a) approaching the level of [parity prices] . . . by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this chapter which has for its purpose the maintenance of prices to farmers above the level [of parity].

7 U.S.C. § 602(2).

> [T]o establish and maintain such orderly marketing conditions . . . as will provide, in the interests of producers and consumers, an orderly flow and supply [of the particular product] to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

7 U.S.C. § 602(4).

Courts generally have recognized protection of the purchasing power of farmers as a central aspect of the Act. See, e.g., Stark v. Wickard, 321 U.S. 288, 303 (1944); United States v. Rock Royal Co-op, 307 U.S. 533, 549-550 (1939); Rasmussen v. Hardin, 461 F.2d 595 (9th Cir. 1972), cert. denied,

409 U.S. 933 (1972). Thus, a declared policy of the Act is to promote parity prices for farmers. "Parity price" is defined as the average price for a commodity over the previous ten years, adjusted to reflect general price increases for articles and services that farmers use. 7 U.S.C. § 1301(a)(1).

The language of the statute, however, expressly directs the Secretary to temper the objective of protecting farmers with the requirement that the interests of consumers also be taken into account.5/ In order to protect consumers, the rate of price adjustments must be compatible with the "public interest." 7 U.S.C. § 602(2). Furthermore, such orderly marketing conditions should be sought as would benefit both producers and consumers. 7 U.S.C. § 602(4).

In the final analysis, the Secretary must act in pursuit of the public interest. Competitive considerations, including the efficient allocation of resources, generally are considered to be an important element of the "public interest" standard, which qualifies not only this program, but also many other types of federal economic regulatory programs.6/ Accordingly,

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5/ The Secretary of Agriculture in determining "crucial facts and conclusions . . . cannot be guided solely by deference to industry desires." Walter Holm & Co. v. Hardin, 449 F.2d 1009, 1016 (D.C. Cir. 1971); Fairmont Foods Co. v. Hardin, 442 F.2d 762, 766 (D.C. Cir. 1971).

6/ See, e.g., Northern Natural Gas Co. v. FPC, 399 F.2d 953, 959-61 (D.C. Cir. 1968); United States v. FCC, 652 F.2d 72, 88 (D.C. Cir. 1980); Sabin v. Butz, 515 F.2d 1061, 1069 (10th Cir. 1975).

the Secretary, in the past, has identified the maximization of producer returns within the context of open and competitive marketing and the achievement of a more efficient allocation of resources as important goals in administering fruit and vegetable marketing orders. See USDA, Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders (1982). Consistent with the important role of competition policy in the public interest standard, courts have implied that the Secretary has considerable discretion in his pursuit of procompetitive policies under the Act. 8/ Based on principles of sound economic theory as well as past experience, it is clear that the proposed rule will defeat the goals set forth both by the Secretary and the Act itself.

8/ In Pescosolido v. Block, 765 F.2d 827 (9th Cir. 1985), the Ninth Circuit gave the Secretary broad authority to balance other policy goals against the pursuit of parity. The court held that it was sufficient if the order "tended" to promote parity. "'[P]arity' is a goal toward which the Secretary must strive, rather than the process of setting an objective, fixed price." Id. at 830.

Similarly, in Schepps Dairy, Inc. v. Bergland, 628 F.2d 11 (D.C. Cir. 1979), the court considered a challenge to a milk marketing order by a dairy that complained that regulations were not written in a way that would bring its returns as close to parity as possible. The court ruled for the Secretary, finding that a "larger location adjustment, such as that sought by Schepps, would likely raise the price of milk to consumers in Houston and other areas distant from milk-producing regions." Id. at 19.

II. ECONOMIC ISSUES RAISED BY VOLUME REGULATION

The notice of proposed rule states that the major reason for use of volume regulations under the navel orange marketing order is to establish and maintain orderly marketing conditions for navel oranges and thereby benefit producers through higher returns. As discussed more fully below, the Department of Justice has concluded that volume controls impose clearcut costs to society, whereas any benefits flowing from price stabilization efforts are speculative. Moreover, experience during suspension of volume controls in recent times suggests that market forces will operate to assure both "orderly marketing conditions and adequate supplies." In the absence of prorate and the cartel-like manner in which it is imposed, the Department expects, based on a review of the available information, that the navel orange market would operate more competitively and more efficiently.

A. Growers Do Not Benefit From Prorate In the Long Run

Volume controls in the navel orange industry -- called prorate -- are set based on recommendations by the NOAC and specify the maximum quantity of navel oranges handlers may ship fresh during a given week. In effect, the navel orange marketing order authorizes NOAC to act as a legalized cartel to set output and hike prices for navel oranges. Production in excess of the allowed quantity must be held for shipment at a later time or be processed. As a practical matter, in some years, a significant portion of the navel orange crop has gone neither to the fresh nor the processed market, but was left to rot on trees or was fed to cattle.

Using a committee-set prorate to restrict the quantity of navel oranges sold in the fresh market is an example of the use of a cartel-like mechanism to effectuate price discrimination, which occurs when a commodity having separate end uses is sold in each market at different prices not justified on the basis of cost. Prorate quantity constraints effectuating price discrimination raise grower revenue in the short run by restricting sales of fresh oranges because the demand for fresh oranges is relatively inelastic, as compared to demand in the processing market. When demand is relatively inelastic, a given percentage reduction in output generates a larger percentage increase in price. Conversely, when demand is relatively elastic, a given percentage expansion in output generates a smaller percentage decrease in price. Thus, by diverting merchantable fresh oranges from the fresh to the processing market, prorate increases prices and grower revenue more in the fresh market than it decreases prices and revenue in the processing market. Overall, average returns to growers are thereby increased relative to returns attainable in a market not subject to volume-restriction regulation.

The navel orange prorate enhances grower revenue only in the short run, however. The cartel-like price discrimination raises revenue by suppressing the volume of sales permitted from a given level of fresh orange production, but prorate does not preclude entry or expansion by existing producers. Since

production increases in response to higher average returns generated by prorate, more and more fresh oranges must be diverted to the processing market over time in order for any given level of fresh prices to prevail.

Diversion to the processing market lowers weighted average returns and, as these returns are distributed over an ever-increasing volume of production, average returns per acre decline. Ultimately, average returns reach the point where they equal the long-run costs of production and growers earn only a normal return on their investment.

B. Prorate Harms Consumers In the Short and Long Run

Consumers are hurt in the short and long run by prorate. In the short run and long run, prorate artificially raises the price of fresh oranges. Moreover, because of the higher price, some consumers do not buy fresh oranges or buy fewer oranges than they would otherwise. In effect, these consumers are forced by prorate to forego purchasing fresh oranges at the lower prices that would exist in a free market. The orange consumption foregone is a clear economic loss.

In the long run, consumers are hurt by orange over-production encouraged by prorate-enhanced grower returns. Thus, scarce land, capital, labor and federally-subsidized water are spent to produce a product, e.g., California-Arizona navel oranges used for processing, not justified by the value placed upon it by consumers. Consumers would be better off if

these resources were used for producing goods of greater value to consumers, including but not limited to fresh oranges.

C. Price Stabilization Benefits of Prorate Are Speculative

Advocates of prorate argue that price discrimination produces a societal benefit by lowering grower risk. This argument has two steps: First, prorate can reduce grower risk by constraining fresh sales during large crop years and second, since growers prefer to avoid or reduce risk, they will tend to view the resulting reduction in risk as a reduction in the cost of business. Such reductions in costs will tend to result in an increase in the quantity supplied at a given price.

Patterns of price variation, however, often are associated with known seasonal patterns of changes in supply and demand, as well as with unexpected events such as unusually large crops due to good weather. Any attempt to "stabilize prices" by counteracting predictable seasonal patterns in supply and demand reduces welfare to society because it interferes with the efficient workings of the price system. It is efficient for prices to rise during periods of high demand so that growers have the incentive to plant trees to accommodate this demand, and so consumers can get more oranges. It is also efficient for prices to decrease during the period when a large portion of the crop is maturing so that growers can sell more so as to save on storage costs.

While interfering with efficient operation of the market, it is possible that prorate produces its own destabilizing

effect on the navel orange market. The uncertainty that often surrounds the timing and implementation of quantity controls can introduce a kind of "regulatory risk." Since risk is a cost of doing business, growers may react as they do when any cost of business increases: reduce quantity supplied at a given price.

D. Balancing The Costs and Benefits of Prorates

To evaluate the overall benefit to society of prorates requires a balancing of the costs of resource misallocation due to cartel-like price discrimination against any benefits due to a possible increase in supply due to a program to stabilize prices. A 1981 USDA Report points out that

> Continual use of [prorate] provisions, particularly use during years with average or smaller than average crops, or increasing diversion to secondary markets, would suggest that efficiency losses from misallocation are likely to exceed any stabilization benefits.9/

Navel orange prorates have been used in almost every year since the order was authorized in the early 1950s. Shepard found that from the onset of the navel orange marketing order to the end of his study period in the early 1980s the proportion of the California-Arizona navel orange crop diverted to processing had doubled.10/ These facts on the frequency and effect of

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9/ USDA, A Review of Federal Marketing Orders for Fruits, Vegetables, and Specialty Crops 34 (1981).

10/ Shepard, Cartelization of the California-Arizona Orange Industry, 1934-1981, 29 J. of L. & Econ. 83 (1986).

prorate persuasively suggest that efficiency losses from misallocation are likely to exceed any stabilization benefits.11/

IV. MECHANISMS FOR REDUCING RISK IN THE CITRUS INDUSTRY

There are numerous market mechanisms that currently exist that reduce the risks associated with the citrus industry without incurring the social costs of prorates. Among these mechanisms are risk-reducing pricing methods, participation in risk sharing organizations, income diversification, better use of preservation and storage techniques, and increased market information.

A. Pricing Methods

At one time, auction markets were the prevailing method of selling citrus. Citrus growers selling fruit at these markets risked unexpectedly low prices because they would have to commit to selling their fruit (by picking and transporting it to the auction) before they knew the selling price. Today, 90 percent of California-Arizona navel orange sales are made at firm F.O.B. prices before shipping.12/

11/ The notice of proposed rule notes that if NOAC finds that size regulations of navel oranges were deemed useful in achieving orderly marketing conditions, the committee would recommend them to the Secretary. Size regulations have the same harmful economic effects as prorates and the analysis contained in these comments applies equally to that type of regulation.

12/ N. Powers, Effects of Marketing Order Prorate Suspension on California-Arizona Navel Oranges (USDA Economic Research Service Paper) (1990).

Another option used today is forward contracts -- agreements between a grower and a buyer in which a price is agreed to well in advance of the harvest. These contracts are currently used in Florida 13/ and are available to growers of fresh citrus.14/ By reaching such an agreement, growers establish a fixed price they will receive when the fruit is harvested. This effectively transfers the risk of low prices at harvest time to the buyer.

B. Risk Sharing Organizations

Some growers in the citrus industry reduce the price risk by sharing the risk with other growers (through cooperatives) and/or handlers (through participation plans).15/

A cooperative is an organization owned by member growers that packages, markets, and sells the fruit. Fruit produced by cooperative members is divided up into pools based on fruit characteristics and time period during which it was marketed. A grower's proceeds depend on the average price received by the cooperative for that pool and are proportionate to the amount of

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13/ Although these comments focus on the marketing of California-Arizona navel oranges, it is worthwhile to note that citrus fruit grown in Florida and Texas are marketed without volume controls.

14/ L. Jackson, Introduction to the Florida Citrus Industry - Its Production, Harvesting and Marketing Practices (Florida Cooperative Extension Service, Institute of Food & Agricultural Sciences, University of Florida) (1990).

15/ Id.

fruit that grower contributed to the pool. This system reduces the risk associated with daily fluctuations of price, since every grower in a given pool receives the same average price.

A participation plan is an agreement between a grower and a handler. Participation plans are similar to cooperatives in that a given handler typically will contract with numerous growers and pool the products. The grower's proceeds again depend on the average price received. A potentially important difference is that the handler is owned by individuals other than the growers, thus increasing the number of entities over which the risk is spread.

C. Risk Reduction Through Income Diversification

A potentially important method of risk reduction is diversification of income streams. One method of income diversification is through product diversification. Growers that harvest a number of different crops within a season reduce their reliance on any one crop. The 1982 Census shows that for one-quarter of the California citrus growers, citrus comprised less than a third of their total acreage.

Another way income streams are diversified is through corporations. In a corporation, the risk is borne by all of the shareholders. More importantly, the income derived from the crop need not comprise a substantial portion of any one

shareholder's wealth. Consequently, corporate growers are less likely to care about interseason price fluctuations.16/

D. Storage and Fruit Preservation Techniques

Another way the market reduces the grower's risk is through the development of techniques that increase storability of citrus fruit by allowing the grower to hold on to the fruit during periods of low prices and wait for higher prices. Refrigeration is one way growers can increase the marketable life of the fruit. Other methods include: (1) tree storage, the ability to store the navel oranges on the tree for two to five months,17/ (2) waxing the outside of the fruit to maintain fruit quality, and (3) precooling to avoid fruit decay in storage.18/

E. Increased Market Information

In theory, regulation could be more efficient than the

16/ In Florida, there were a total of 1190 citrus farms that were corporations versus 5625 citrus farms owned by individuals, but 440,000 acres were controlled by the corporations versus only 160,000 by the individuals. Over three quarters of the total citrus acreage was controlled by corporations and partnerships combined (1987 Census of Agriculture, Volume 1, part 9). In California, about twenty percent of the citrus acreage was controlled by corporations and almost sixty percent was controlled by either a corporation or a partnership (1987 Census of Agriculture, Volume 1, part 5).

17/ See, P. Thor & E. Jesse, Economic Effects of Terminating Federal Marketing Orders for California-Arizona Oranges (USDA Economics Research Service Bulletin) (1981).

18/ USDA Farmer Cooperative Service, Sunkist Adventure 59 (1975).

market in allocating risk if the market failed to provide sufficient information and opportunity to enable participants to make their own decisions about risk. In practice, current market information is readily available and rapidly disseminated in the citrus industry, both through government and private publications and through the activities of cooperatives. With access to such information, growers, handlers, and buyers can adapt to risk by adjusting their behavior quickly in response to changes in market conditions.

Market-driven adaptations are likely to increase efficiency and benefit consumers. For example, measures to store and preserve oranges would increase their supply when oranges are scarce, thereby lowering prices faced by consumers and making more fresh oranges available to them. Efficient adaptations of this kind are discouraged by prorates, and would be increasingly implemented in the absence of a prorate.

IV. EMPIRICAL EVIDENCE OF ECONOMIC EFFECTS OF PRORATE

All available empirical evidence supports the view that in the long run growers do not receive increased returns from prorate price discrimination efforts and that prorates have an adverse effect on resource allocation. Moreover, the available evidence concerning the supply response to price stabilization efforts does not provide significant support for the benefits of prorates.

A. Evidence Of No Long-Run Benefits To Growers

Shepard's 1986 study of the California-Arizona orange industry, supra, note 10, and Smith's 1961 study of the lemon

industry19/ both found that growers did not earn long-run returns above what they could have earned without volume regulation.

B. Evidence Of Prorate's Effect On Resource Allocation

Numerous studies have found that use of prorates results in an oversupply of total navel production as a result of the artificially high prices of fresh navel oranges that such restrictions produce. Shepard, supra note 10, found in 1986 that from the onset of the navel orange marketing order in the 1950s to the 1980's diversions to processing had doubled. Thor and Jesse's 1981 study, supra note 17, found there might be up to 30 percent excess production as a result of prorates. Two studies, in 1986 and 1990, found that production had increased so much that the average on-tree returns for processed oranges were negative.20/ In the 1986 study, Powers found that during the period 1979 to 1984 the average on-tree returns for processed oranges were -62 cents per carton.

An ironic twist that illustrates the inherent problem with a prorate system is noted in the 1990 study:

19/ Smith, The Lemon Prorate in the Long Run, 69 J. of Pol. Econ. 573 (1961).

20/ N. Powers, G. Zepp & F. Hoff, Assessment of a Marketing Order Prorate Suspension: A Study of California-Arizona Navel Oranges (USDA Agricultural Economic Report 557) (1986); Powers, supra note 12.

> Picking and shipping navels which enter processing is profitable for growers even though growers' returns are often negative, because navels used in processing represent a part of the production base used in the marketing order from which the maximum quantity of navels eligible for fresh use is calculated.21/

Operating a losing business (navel oranges for processing) has become the price of admission for entering the business of selling fresh navel oranges.

C. Evidence Of The Effect Of Prorates On Supply

The mistaken notion that prorates efficiently increase the amount of fruit growers are willing to supply at a given price relies on two assumptions: 1) that prorates effectively reduce the unpredictable price variability, and 2) that risk averse growers respond to this risk reduction by increasing supply.

A number of studies have looked at the effect of prorates on navel orange price variability. Although the relevant issue is the effect of prorates on unpredictable price variations, these studies have looked at prorates' effect on total price variations. In that framework, Powers, et al. found that estimated on-tree prices (before picking) of fresh and processed oranges were more stable during a period of prorate suspension than during a comparable period when prorates were in effect. The same was true for grower prices after picking. Some handler prices were more stable during the suspension;

21/ N. Powers, G. Zepp & F. Hoff, supra note 20.

others were less. Prices varied depending on the grade of the fruit, its size, and the area in which it was grown.

On the other hand, Thor and Jesse in 1981 22/ found evidence suggesting that prices would be more volatile without prorates. Shepard's 1986 study found that removal of prorates would increase the price stability of processed navels, but would decrease the price stability of fresh navels.23/

In sum, there are no studies that focus on the relevant price volatility factor -- unpredictable price variations -- so we do not know how prorates affect them. We do know, however, that the results that exist on total price volatility, taken as a whole, do not offer significant support for prorate advocates' contentions that prorates reduce price volatility.

Prorate advocates' assumption that risk-averse growers will respond to price stablilizing efforts by increasing supply is not well supported, either. While two studies, Shepard in 1986 and Thor and Jesse in 1981, found that supply reacts to price volatility, as noted earlier, price volatility is not a good proxy for risk. Indeed, it is likely to be a particularly poor proxy, since there is much predictable price variation in citrus markets.

22/ P. Thor & E. Jesse, supra note 17.

23/ Shepard, supra note 10.

D. Evidence From Periods of Prorate Suspension

During the 1980s, the California-Arizona navel orange prorate was suspended a number of times. The USDA produced two studies in which the authors empirically examined the effects of the suspensions.24/ The first study focused on the suspension during the 1984-1985 season which took effect after 52 percent of the crop had been marketed. The second study examined all navel orange prorate suspensions during the 1980s through the 1988-1989 season.

The 1986 USDA report projected (based on the 1984-85 data) that a season-long suspension would lead to an increase in the shipments of fresh navels, with a corresponding decrease in the shipments of processed navels. The study predicted that prices of fresh navels would drop, while the prices of processed navels would remain unchanged. The authors estimated that the benefit to consumers would be $30 million during a normal supply season, and overall economic welfare would increase by $17.5 million.

24/ N. Powers, supra note 12; N. Powers, G. Zepp & F. Hoff, supra note 20.

The 1990 report also showed that the quantity of fresh navel oranges consumed increased and the consumption of processed navels decreased as a result of prorate suspension during portions of each of the growing seasons from 1982-83 to 1988-89. These changes led to a decrease in the price of fresh navels and an increase in the price of processed navels. Powers estimated social gains attributable to suspensions ranging from $4.4 million in 1982-83, a large crop year, in which there was a small amount of shipments during the suspension, to $43.5 million in 1984-85, a small crop year, in which there was a large amount of shipments during the suspension.

CONCLUSION

Imposition of quantity controls at this time, especially in view of the absence of evidence indicating that suspension of volume regulation has resulted in disorderly marketing conditions, is unwarranted. Since the Act does not mandate the use of volume controls but simply allows the Secretary to impose them when their use would effectuate the purposes of the Agricultural Marketing Agreement Act, the Secretary should

exercise his discretion to allow the market to operate without regulation in the 1990-91 season.

Respectfully submitted

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