

State supervised price negotiations

Under federal law known as the Capper-Volstead Act of 1922, growers are allowed to join together in legal entities as farmer cooperatives, bargaining associations or other formations that allow them to pool their production and negotiate collectively over prices to sell their products, make joint purchases of inputs, and conduct other transactions. The Fishermens Cooperative Marketing Act of 1934, provides the legal framework for forming cooperatives and provides fishermen with the opportunity to work collectively in catching, producing, preparing for the market, processing, handling, price and marketing such products in interstate and foreign commerce. These laws give producers and fishermen assurance that if they organize in compliance with a few constraints and conduct their joint marketing activities in a responsible manner, they will not be considered as being engaged in an illegal restraint of trade.

Even though growers and fishermen have the ability to conduct activities in cooperative arrangements, a grower/fishermen organization cannot meet with more than one purchaser of their commodities at a time. If two or more dealers meet together to discuss prices with growers/fishermen, this would be consider price collusion on the part of buyers.

The mechanism to enable such a transaction - that is, bringing together farmer cooperatives/fishermen cooperatives or bargaining associations with multiple buyers to negotiate over prices of a single commodity - is called State Action Immunity. This process is supervised by the Oregon Department of Agriculture from start to finish and provides antitrust immunity for dealers to collectively enter into price discussions with growers and fishermen.

Utilization of the process and participation in the process is voluntary. The Oregon Department of Agriculture provides oversight authority as provided by the statute and administrative rule 603-076 when requested by the growers or fishermen and the dealers.

Requisite Legislative Authority and Role of Oregon Department of Agriculture:

Active supervision includes:

- The exercise of independent judgment and control so that the review and approval of prices is more than "stamping" the agreement of the parties;
- Supervising and guiding discussions to prevent antitrust violations;
- Receiving and reviewing minutes of all meetings;
- Approving or disapproving of prices to assure they meet the interests of the state (such as maintaining a healthy agricultural industry, local economy, a balanced marketplace, etc.) and not solely the interests of the parties;
- Stipulating cease and desist orders to the parties on any actions ODA deems not in compliance with the interest of the state and proper negotiations; and,
- Evaluating complaints from affected third parties who may challenge the anti-competitive conduct.

This process creates a unique opportunity for growers, fishermen and dealers in Oregon's agriculture commodity markets to have broad discussions about all market factors involved, and to negotiate prices that reflect these influences.