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THE DAIRY INDUSTRY AND THE AAA

**THE DAIRY INDUSTRY
AND THE AAA**

**BY
JOHN D. BLACK**

**WASHINGTON, D. C.
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DIRECTOR'S PREFACE

This is the third publication of The Brookings Institution in a series of six which deal with the handling of particular commodities or groups of commodities under the Agricultural Adjustment Act. These books present the results of a study of operations under the act concurrently with their progress. A group of specialists has been maintained in Washington since June 1933, and during 1933 and 1934 local observers have reported developments in important markets and producing states to the Washington staff.

This present report is based upon intensive study of the large body of data and information concerning the dairy products program that has been published by the AAA, the milk producers' associations, the other dairy co-operatives, and the several organizations of dairy distributor and processor interests. These sources were supplemented by interviews with hundreds of workers connected with these agencies and with the AAA organization. Members of our staff, Washington specialists and field observers, have attended many of the important public hearings on proposed marketing agreements and conventions of dairy interests organizations and have followed discussions in dairy and farm papers and reports of developments in the daily press in cities where licenses have been in operation. Thus their conclusions are based upon materials of very comprehensive character, many of which were not easy of access at the time and which have already in large part disappeared.

The author of this report has undertaken, as a background for interpretation and evaluation of the AAA activities relating to dairy products, to outline the condi-

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tions in the dairy industry out of which arose the demand for control and to analyze the problems with which such control is concerned. Much of the discussion, therefore, has an important bearing upon state as well as federal effort at control, and upon future developments in milk marketing regardless of what may happen to the current public ventures.

The actual writing of the volume has been in progress since June 1934, in a period during which the dairy industry itself has been unusually affected by weather conditions and by market forces, and also during which the efforts at administration have been greatly disturbed by the struggles of contending interests and the judicial decisions of numerous courts entertaining by no means harmonious views. Hence the policies of the Administration have been constantly in flux. It has been possible in the final reading of the proof to indicate only briefly the changes introduced by the new amendments to the act but not to project specifically their effects on the dairy products program of the AAA. These effects will be discussed in a summary volume to be published next year.

The manuscript of this volume was read and accepted by a committee consisting of Charles O. Hardy as a representative of the Institute of Economics staff, Joseph S. Davis, co-director of the AAA study, and myself. As in the case of all the books in the series, the views expressed are to be regarded as those of the individual author rather than as an Institutional pronouncement.

EDWIN G. NOURSE

Director

Institute of Economics

August 1935

AUTHOR'S ACKNOWLEDGMENTS

The author has been assisted greatly in the preparation of this volume by a large and diverse group of workers in the dairy industry. Staff members of milk producer associations and other dairy co-operatives and of milk distributing firms have discussed freely with him the problems arising under the dairy programs of the AAA, and have given freely of their time and information to the twelve resident observers who kept the author in touch with current developments in their markets. The milk administrators in a number of local markets have been of much help in interpreting current developments in their areas. Of particular value have been the discussions with officers of the several organizations of dairy interests and the reports and materials which they have supplied. Of course the study could not have been made had not the workers in the AAA been willing to answer thousands of questions as to the details of operation of the dairy products program.

The author acknowledges particular indebtedness to F. F. Lininger of Pennsylvania State College, who collaborated with him in the first part of the study and wrote the first report upon it; to Harry Trelogan of the University of Minnesota, who assisted him in Washington in the summer and fall of 1934; to Harold B. Rowe of The Brookings Institution staff, whose clear understanding of fluid milk problems he has found invaluable; to John M. Cassels of Harvard University for many fruitful suggestions derived from his *Study of Milk Prices*, about to be published; and finally to E. M. Vial, Gordon Sprague, John B.

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Shepard, and Richard K. Smith of the Bureau of Agricultural Economics for data used in the analysis of conditions in the dairy industry in Chapters II, III, and XIV especially. Like many other writers, the author has made free use of the data laboriously assembled and analyzed by these and other workers in the Department of Agriculture, and of charts and maps which they have designed and published, with only such passing recognition as a textual or footnote reference.

All or portions of the manuscript have been read by Mr. Lininger, Mr. James Tinley of the University of California, Mr. W. D. Hunnicutt of French-Bauer, Inc., Cincinnati, Mr. Charles W. Holman and Mr. Donald Kane of the National Co-Operative Milk Producers' Federation, Mr. W. A. Wentworth of the Dairy Industry Committee, and Mr. E. W. Gaumnitz, Mr. Paul Miller, Mr. J. W. Tapp, and Mr. Einar Jensen of the AAA. Many of their suggestions have contributed much to the improvement of the volume. Some suggestions have been accepted only in part or not at all; and none of those reading the report in advance of publication are in any way responsible for its statements.

JOHN D. BLACK

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CHAPTER I

THE POSITION OF DAIRY PRODUCTS UNDER THE AGRICULTURAL ADJUSTMENT ACT

Dairy products were made subject to all three provisions of Section 8 of the Agricultural Adjustment Act: first, the provision authorizing adjustments of production through use of contracts with producers, benefit payments, and processing taxes; second, the provision relating to marketing agreements with processors and handlers of farm products and associations of producers; and third, the provision for use of the licensing power as a means of eliminating unfair marketing practices and charges.¹ The act did not make all or any of these provisions mandatory; rather it provided for their use at the discretion of the Secretary of Agriculture.

Dairy products came under the first provision because in Section 11 the term "basic agricultural commodity" is defined to include "milk and its products." Under this section also, the Secretary was given authority to treat as a separate basic commodity any regional or market classification, type, or grade of dairy product, such as fluid milk, cream, butter, cheese, and so on, or any sub-classification of these. If, upon investigation and due opportunity for hearing, however, he decides that during any period the provisions applicable only to "basic" commodities cannot be administered so as to accomplish the declared purpose of the act with respect to any commodity or classification,

¹ See Appendix A for all portions of the Agricultural Adjustment Act here mentioned and for the 1934 amendments. One 1934 amendment provided that individual producers could be parties to marketing agreements.

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he is *required* to exclude it for such period from the operations of these provisions.

The production adjustment, benefit payment, processing tax, and related provisions apply to basic commodities only, whereas the marketing agreement and license provisions could be applied to *all* agricultural commodities and products thereof. Also, either of these could be applied separately from the provisions covering basic commodities only, and independently of each other.²

OBJECTIVES OF THE ACT

The title of the Farm Relief Act of 1933, of which the Agricultural Adjustment Act constitutes only Title I, designates as its primary objective the relief of "the existing national economic emergency by increasing agricultural purchasing power." The "Declaration of Emergency" refers to the disparity between prices of agricultural and other commodities and its effect on the purchasing power of farmers, and the "Declaration of Policy" definitely proclaims the re-establishing of pre-war purchasing power of agricultural commodities as the intent of the act.³ The

² See Edwin G. Nourse, *Marketing Agreements under the AAA*, for a fuller discussion of the interrelationships of these three provisions.

³ "Declaration of Emergency. That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of Title I of this act.

"Declaration of Policy. . . . Sec. 2. It is hereby declared to be the policy of Congress—

"(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural

AAA administrators therefore were under obligation to undertake, as rapidly as possible, to raise the price of any farm product that was below parity, if in their judgment the product would lend itself to the methods outlined in the act. Hence the procedures adopted or sanctioned by the Adjustment Act must be analyzed in the first instance in terms of their price-raising effectiveness.

The prices to be raised by the act are the prices paid to farmers, not the resale prices of processors and handlers. In only two places does the act authorize control of resale prices, and there only by implication. First, the use of licenses, cited above, "to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof," may be interpreted as authority to control processors' and handlers' margins. The access provided in Section 8 (4) to information and records on prices of commodities bought and sold amply justifies such an interpretation. Second, the instructions to the Secretary of Agriculture in Section 9 to prevent the pyramiding of processing taxes imply a limited control over resale prices of basic commodities.

commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war period, August 1909-July 1914. In the case of tobacco, the base period shall be the post-war period, August 1919-July 1929.

"(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

"(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914."

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A reasonable reading of these two passages, however, supports the view that the grant of powers they contain is intended largely if not altogether for the purpose of keeping processors' and handlers' margins at a moderate level and not for the purpose of insuring middleman prosperity. The unfair charges to be eliminated are apparently unfairly high rather than unfairly low charges. On the other hand, the framers of the act may have considered as unfair some practices affecting resale prices that might indirectly have the effect of lowering prices paid to producers by processors and handlers. If the act is so interpreted, these agencies will derive some protection from it; but even so, the end sought, if we read this passage in its full context, would appear to be higher prices to producers and not remunerative margins to processors and handlers.

On this last point, however, there is some little basis for a contrary argument. Perhaps the phrase in the act which further defines these unfair practices and charges as also tending to prevent the "restoration of normal economic conditions in the marketing of such commodities" gives further color to such a contrary opinion. However, read in conjunction with the Declaration of Emergency and Declaration of Policy, this phrase likewise would appear to call for such restoration with a view to its effect upon prices to producers and not upon incomes of processors and handlers. The companion phrase in the Declaration of Policy, "and such marketing conditions therefor," is absolutely tied to the objective of raising prices of farm products. It is also closely tied to the objective of balancing production and consumption—that is, in essence, of controlling production. The phrase in question was apparently added to give the Secretary power to keep processors and handlers from interfering with his efforts to secure "orderly" mar-

keting in association with properly balanced production. The Declaration of Emergency refers to the "orderly exchange of commodities" as having broken down; but here the thought is more in terms of general loss of market from reduced purchasing power.

The exemption from the anti-trust acts given to marketing agreements in Section 8 (2) likewise cannot be taken as assuring satisfactory margins to contracting processors and handlers. This exemption was granted to make it legally possible for them to act in groups in negotiating terms with the Secretary, and contains no implications as to adequate margins and resale prices.

The foregoing statement, however, must not be interpreted to mean that the Administration is prohibited from including provisions benefiting processors or handlers in its marketing agreements and licenses. The many possible provisions of mutual benefit to marketing agencies and producers belie such an interpretation. This is probably true also of provisions benefiting marketing agencies largely or altogether and not injuring the producers, especially if they can be considered as in return for favors extended by marketing agencies to producers. One can scarcely imagine the processors or handlers entering into marketing agreements in the absence of tangible net benefits. Licenses intended to force them to participate in the Administration's program could of course be imposed upon them; but half-hearted compliance could defeat the whole effort. Surely a more rational procedure would take the form of a joint undertaking by the Administration, representatives of the producers, and representatives of the marketing agencies, to develop a program of benefit to producers and marketing agencies, but more largely of benefit to the former.

In addition to the declarations of emergency and policy,

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the act defines the limits of its objectives in two other ways. One is that so-called parity price or "fair exchange value" is set up as a goal to be attained. This is defined in Section 9(c) as follows:

. . . the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in Section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.

In the second place, the processing taxes designated in Section 9(b) are limited to "such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity." As will appear later, these two statements of the limit appear somewhat inconsistent with each other, since if prices are raised to the parity level no basis is left for collecting processing taxes. It is true that if the prices obtained are only such as will give parity with benefit payments included, the taxes can be collected year after year. But no production control scheme can guarantee that poor yields will not raise prices above parity at any time and destroy the basis for the processing taxes. The Adjustment Administration has therefore deemed it necessary to interpret the tax provision to mean a uniform tax during the period of a contract, and the recent amendments definitely provide that taxes can be collected though the price is temporarily above parity.

As the act now stands, these provisions define the upper limits of the price-raising activities. The Administration is not required, however, to raise prices to these limits either at once or ever. To begin with, the Secretary is definitely

instructed in Section 9(b) not to levy processing taxes of this magnitude if stocks accumulate unduly or the farm price of the commodity is seriously depressed as a result. In the second place, the Declaration of Policy instructs the Administration that it is to work toward equality of purchasing power "gradually," "at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets."

These qualifications were inserted by the framers of the act because some of them realized that establishing parity prices for most farm products before demand fully recovered would defeat the underlying objective of increasing the total purchasing power of agriculture. In fact, some of them recognized that parity prices for some products could not be realized in several years, if ever, without real injury to their producers, and would not be attained under any sensible administration of the act, except possibly temporarily because of some pronounced disturbance such as war or wild inflation. Thus, if the relatively low prices for any farm product were in part due to more than ordinary improvements in the art of their production, with accompanying reduced costs, then parity would be a poor goal indeed. The same would be true if any special circumstances in the base period, 1910-14, made the price of some product unusually high or low at the time. Some of those assisting in the development of the Adjustment Act were well aware of these limitations of parity price, and lent their influence to attaching the foregoing qualification to it.

Parity price, therefore, must not be taken too seriously as the goal or limit of the price-raising activities of the AAA. It must be considered as a rough indicator of the extent of the price increase to be sought. The earlier farm relief

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measures mostly made the world price plus the tariff duty the limit of the price increase.⁴ Important Democratic members of Congress had objected to this device from the beginning. They opposed it in the early hearings on the Adjustment Act. The new Democratic Administration therefore needed a substitute for it. The only one then before the public was that old forlorn hope of numerous futile endeavors at farm relief the world over, "cost of production," espoused by John Simpson of the Farmers' Union and supported by many in Congress. In order to defeat the drive for this formula, the sponsors of the new legislation lifted the parity price idea out of the first McNary-Haugen bill, furbished it up, and fitted it into the new measure for farm relief.⁵ It could be given a popular appeal and made reasonably understandable, and it was believed that its administrative deficiencies could be remedied by inserting a few carefully phrased qualifying statements.

The other limit set upon price raising was that the producers' percentage of the consumers' retail dollar should be no higher under the act than in the base period. This would

⁴ Of course the sponsors of these measures expected to raise the tariff duties in case they did not support a sufficiently high domestic price, and so these duties furnished no real measure except in an immediate sense. Mr. George Peek in his pamphlet, *Equality for Agriculture*, published in 1922, and in the first McNary-Haugen bill, set up "fair exchange value" as the goal of price-raising legislation; but the actual price control was in terms of tariff duties, and "fair exchange value" was omitted from all later revisions of the McNary-Haugen bill. Mr. Peek believed that fair exchange value was equal to cost of production, and that if tariff duties equalized international differences in cost of production, they would assure "fair exchange value" in the protected country operating under the McNary-Haugen plan.

⁵ This was first done in the Hope-Norbeck bills of July 1932, introduced following the hearings on the first version of the present act. Mr. Peek had no part in the developments at this stage; but Mr. Frederick P. Lee, who while in the bill-drafting service of the Senate had helped to draw up the McNary-Haugen bills, assisted in a private capacity in drafting the present version of the act. He was able to restore even some of the language of the old bills, including the term "fair exchange value."

prove to be no practical limitation except in unusual cases, since spreads between prices paid farmers and retail prices are likely to narrow little from the wide spreads established during and just after the World War. Accordingly, prices of farm products will need to rise to high figures indeed before the pre-war percentages are restored. In the recent amendments this definition of the limit has been supplanted by a statement making parity price the positive upper limit of price-raising efforts.

Although the Agricultural Adjustment Act contains no pledge, paralleling its promise of parity prices to producers, of margins and resale prices adequate to restore prosperity to processors and handlers, it does clearly provide that the distribution as well as the production of farm products shall receive attention. The major emphasis is of course upon control of production. Mainly by control of production rather than of marketing, is its price-raising objective to be attained. All but three paragraphs of the act relate primarily to production. But these three paragraphs confer upon the Secretary of Agriculture three separate and highly important powers relative to marketing: the sanction of marketing agreements with the anti-trust exemption, the licensing power, and the right of access to records of marketing agencies in connection with marketing agreements and licenses.⁶ In normal times to have secured any one of these would have required years of legislative effort and overwhelming political majorities.

Clearly an important condition of these three grants of power, as of those providing for control of production, is their temporary nature. The act prescribes that they are to expire with the termination of the emergency.

⁶ The extent of this access in the case of licenses has not been altogether established. The recent amendments supplant licenses by "orders."

Except for the dire straits in which the nation found itself in the spring of 1933, the specific provisions for terminating the act, and the consensus of opinion shared by most processors and handlers that prices of farm products were unbearably low and must be raised, these great powers probably would not have been granted.

Much of the uncertainty and wavering which has characterized the dairy product programs of the AAA is to be attributed to the differing and also shifting opinion within the AAA and the dairy industry with respect to the temporary versus the continuing character of the act. Ostensibly the act is almost solely of emergency intent; and some within the AAA have taken its language literally and have insisted that the devices it authorizes be used to raise dairy product prices as near to parity as possible only until such time as they will stay there of their own accord. Others have believed that the arrangements developed during the "emergency" period are certain to be continued in much the same form after recovery, and that therefore they must be scrutinized carefully with this probability in view. The majority have held opinions of varying shades between these extremes. During 1933 and 1934, these differences prolonged discussion and delayed important decisions for weeks and even months.

Clearly we have not yet progressed far enough along the road to recovery, and have not had sufficient experience with the methods outlined in the Adjustment Act, to make final forecast as to what will follow when the emergency ends. Perhaps we shall not even know when it ends. We can at this time, however, put forward certain considerations that have an important bearing upon the course of future developments, and these will help us in understanding the numerous issues that have arisen in applying the

act to dairy products. Some of these considerations are best presented in terms of the background and evolution of the act itself.

ORIGINS

The Agricultural Adjustment Act has its ancestry in three distinct lines of effort, only one of which was purely emergency in character. These are, in historical order, the McNary-Haugen campaign, the domestic allotment movement, and the emergency relief drive started in the spring of 1932.

The McNary-Haugen effort was intended to introduce into our political system upon a continuing basis a scheme for raising the prices of export farm products to the level of tariff protected products.⁷ Many held that this effect would be only temporary, because of the expansion of output that would promptly ensue; but its sponsors never conceded this.

The domestic allotment movement, under this name, began when the plan was presented to congressional committees in 1929 and Professor M. L. Wilson set forth upon his long educational campaign for it that finally culminated in its acceptance by Governor Roosevelt in June 1932. In the meantime it had been substantially altered in its procedures and even objectives, largely at the suggestion of President Harriman of the United States Chamber of Commerce. The real origin of the adjustment phase of the movement, however, dates back to discussion of "production adjustments" begun in 1922, which gave fruit to the "outlook" program of the first Secretary Wallace in that year. In 1928 it produced the Christgau bill, designed to organize the federal and state departments of agriculture, the state col-

⁷ The bills were ostensibly for emergency relief, but allowed ten years in which to accomplish it.

leges, experiment stations, and extension services, and whatever voluntary groups might be interested (such as banker associations, the agricultural press, etc.), into a vigorous agricultural planning body that would first determine the production adjustments needed and then undertake to get producers to make them. The original domestic allotment plan was developed and promoted by the same group that had been endeavoring to expand the "outlook" program to include an "adjustment" program based upon it, and is properly interpreted from one point of view as a much more positive form of the same idea, which this group wished to have tried out with a few major export crops. From another point of view, it was, like the McNary-Haugen scheme, a device for raising prices of these products immediately; but it came much closer to safeguarding against subsequent stimulation of production than did the McNary-Haugen scheme. Therefore it too was essentially a continuing program. The processing taxes, individual contracts, and rental and other benefit payments were all added in the revisions made in 1931 and 1932.

The emergency relief drive began in the spring of 1931 when the farm organizations suddenly came to the conclusion that no one of the three plans sponsored by them,⁸ nor the combination of all three which they were urging at that time, had any chance of passage in that Congress, and that they must devise some plan for quick relief that would save the farmers till a "permanent" plan for farm relief could be worked out and pushed through Congress. The relatively favorable reception which the committees of Congress had in the meantime accorded to Professor

⁸ The McNary-Haugen plan, sponsored by the American Farm Bureau Federation; the export debenture plan, sponsored by the Grange; and the Simpson cost of production plan, sponsored by the Farmers' Union.

Wilson's presentation of the revised form of the allotment plan had much to do with this decision. The quick-relief measure then hastily concocted consisted of Wilson's proposal minus production control, that is, merely of processing taxes to collect funds with which to pay premiums on the domestic quotas of the 1932 crop. It passed the Senate by acclamation one day, but was voted down the next (July 14).⁹

Late in 1932, President-elect Roosevelt called together a small group to formulate a farm relief measure following the lines of his campaign statements. The group consisted mostly of representatives of the farm organizations bent upon securing quick relief first and a "permanent" program later, and of representatives of the group which since 1922 had been working along the line of a continuing program of production and related adjustments. The latter were ready to accept emergency relief as politically and otherwise necessary, but wanted to have it provided in such a way as not to preclude realizing their objectives also. Hearings were held in December and a bill was introduced in the House on January 3. In the discussions preceding, and in the ensuing debates in Congress in the winter of 1932-33, these two objectives contended with each other, often in the mind of the same speaker.¹⁰ The compromises reached in that session generally consisted of the Wilson-Harriman "voluntary domestic allotment plan" with its provision for an initial referendum removed, and several other changes designed to simplify the measure and make it immediately

⁹ The Kieberg bill, H. R. 12730, introduced June 20, 1932; the Norbeck bill, S. 4940, introduced July 13, 1932.

¹⁰ For example, in Mr. Peek's presentation before the Finance Committee of the Senate (72 Cong. 2 sess., *Agriculture*, Hearings on S. res. 315 before Senate Committee on Finance, Feb. 14, 1933).

applicable. The supporters of the House bill (H. R. 13991) wanted something more than a temporary measure for immediate application, and regarded it as furnishing a basis for constructive continuing programs. The Senate Committee reported out a bill of a purely emergency nature. No compromise was possible before the end of the session.

Within a few days after March 4, the new Administration decided to include a farm relief measure in its emergency legislation, and Secretary Wallace issued a call to about 50 agricultural leaders to convene in Washington and draw up a program. This group promptly concluded in favor of giving the Secretary of Agriculture a broad grant of powers rather than specifying any particular farm relief procedure, and drew up the general outlines of a bill thus conceived, leaving the drafting to be done by the secretaries of this conference. The measure offered to Congress on March 16 represented a compromise of the emergency and continuing points of view. It included the domestic allotment, contract, and benefit payment features, plus rental payments as an alternative means of making benefit payments, and the marketing agreement proposal that Mr. Peek had injected into the discussion during the winter.¹¹ This had been an increasingly important feature of his 1926 and 1927 McNary-Haugen bills. His discussion before the Finance Committee of the Senate indicates that he looked upon the production control part of the measure then before Congress as a device to be used only occasionally; that he was in fact opposed to all positive forms of production control except on an emergency basis. His belief seemed to be that, except under dire extremities, farmers could be given *carte blanche* to produce as much as they wanted to

¹¹ The origin and development of the marketing agreement and license features of the act are discussed in more detail in Nourse, *Marketing Agreements under the AAA*.

after being furnished pertinent supply and demand data, and that any temporary "surpluses" might be cared for under various types of agreements with processors and handlers. Should farmers accidentally produce too much of some crop, he apparently felt they should be paid for not harvesting it, but that even during the emergency, the allotment and processing tax scheme should be used only as a last resort.

Although the licensing provision was not included in Mr. Peek's original amendment proposals, and his conception of the use of licenses is not clear from his utterances at the time, he readily accepted it. He apparently thought of licenses as in some measure supporting marketing agreements; also as providing the basis for needed regulation of marketing practices, and enabling marketing agencies to hold in line the minority elements who are always breaking the back of the market. He insisted that regulation was an approach from "another angle of the situation" than marketing agreements.¹² It seems reasonable to conclude that he was not thinking solely or even largely in emergency terms on this point.

Secretary Wallace advocated the licensing provisions at the Senate hearings as necessary to keep both marketing agreements and production control from being sabotaged by hostile processors and handlers.¹³ Neither Mr. Peek nor Secretary Wallace regarded marketing agreements or licenses primarily as instruments of marketing reform, but some of the congressmen definitely injected this note into the debates. Clearly, also, some of those who helped draft the act had the long-time objective of market reform in the

¹² 73 Cong. 1 sess., *Agricultural Emergency Act to Increase Farm Purchasing Power*, Hearings on H. R. 3835 before Senate Committee on Agriculture and Forestry, p. 91.

¹³ The same, p. 11.

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background if not in the forefront of their thinking. Thus, Dr. Mordecai Ezekiel, who assisted in drafting the act, wrote as follows in the pamphlet, *Economic Bases for the Agricultural Adjustment Act*, published in December 1933 as a brief for the act:

The Agricultural Adjustment Act provides for direct efforts at improvements of marketing methods and reduced costs of distribution. Through voluntary agreements with the Secretary of Agriculture, the act makes possible the elimination of trade practices by group action which no individual distributor could undertake and which might be contrary to the anti-trust laws if attempted by private agreements. By means of voluntary agreements under the Agricultural Adjustment Act, it is possible to prevent the losses to producers, distributors, and consumers that arise from the marketing of bumper crops beyond the requirements of consumers. Through marketing agreements it is possible to recognize the principle that reduced costs which result from the establishment of more efficient marketing practices should redound to the benefit of producers, distributors, and consumers. They are also predicated on the sound economic principle that prices to growers, distributors, and consumers can be established at basic levels for each group consistent with existing conditions of consumer purchasing power; provided there are the requisite definite arrangements for carrying through needed readjustments in marketing organization, structure, and pricing methods.

These statements could of course be interpreted as referring only to the period of emergency; but a reasonable assumption is that any such reforms accomplished would be continued afterwards.

Finally, certain language of the act strongly bears out the contention that its originators and framers had continuing objectives considerably in mind. The declared policy "*to establish and maintain*" such balance between production and consumption, and "*reestablish*" such prices to farmers as will give parity prices, could be interpreted

to mean for the period of the emergency only; but thus to interpret it would imply that once the emergency was over these prices would be allowed to drop in case they were so inclined. We may safely assume that the founders had no such thought in mind. Rather, they assumed that the ground gained would be held by such means as might then be necessary.

The conditions under which the act must be applied also have an important bearing upon the question and the form of its continuance. First is the circumstance that the agricultural emergency will probably not pass in a year or two, at least for a number of products; and further, that it will not disappear abruptly, but by degrees, so that at no time in the next several years can it be said to have ended definitely. Under these circumstances the tendency will be to modify the program, in general to restrict it, as conditions improve, so that when the day comes that the emergency can be declared at an end the controls then in effect will be continued by common consent. In the second place, for numbers of commodities, some form of the controls set up in the emergency period will tend to be demanded to prevent a recurrence of the emergency condition, or at least the constant threat of it.

For these reasons, most of the leaders of thought among farm people as well as their rank and file really expect to see the Agricultural Adjustment program continued in some modified form rather than completely abandoned. Under the circumstances, even if the program were abandoned under its present set-up, a new agency would be at once created that would resume the same general program—as surely as the present agency was created to take up the burden let fall with the closing out of the Federal Farm Board. The significant questions relate to what

form the continuing program will take, rather than to its abandonment. It may be as different from the present act as the present act is from the Agricultural Marketing Act. It is much too early to forecast its form.

The conditions affecting the future of the production and marketing adjustment parts of the AAA program probably should be considered separately. Special circumstances such as the troublesome details to which individual farmers are subjected may cause them to turn against production control. The local leaders who have borne the brunt of the task in each community may tire of it and others equal to the task may not come forward. If agricultural conditions improve much in the next few years, farmers may lose interest in keeping production under control. On the other hand, experience with a year of no control may drive farmers toward more rigorous production control.

The types of marketing controls set up are more nearly in line with familiar procedures than are production controls. The provisions for use of licensing power and access to dealers' information and records go much further than any previous practice in the domain of private business, but are the sort of thing we have been accustomed to in the public utility field. The marketing agreements may be interpreted as the familiar collective bargaining arrangements particularly prevalent in the fluid milk markets, plus the inclusion of the government as a third party. The exemption of dealers from the anti-trust laws is indeed a distinct departure, and the contiguity of the termination clause and this exemption strongly suggests the latter as the reason for the former; but it surely is not without precedent in practice as applied to other groups. This exemption can easily be removed or qualified; or it can

be guarded by adequate representation of the public in all negotiations.

THE CONTINUING OBJECTIVES

We may therefore conclude that those in the AAA who have insisted upon reviewing proposed procedures and set-ups from the standpoint of their operation in the post-recovery period have ample warrant for this position. Hence the nature of the objectives which the sponsors and supporters of the Adjustment Act had in mind for the period beyond the depression becomes a matter of first consequence. These objectives were not clearly defined in the discussions and debates, and differed much between agencies and groups. The farm organizations and those who had advocated the three-way bill in 1931-32 had better prices mainly in view, defining these prices variously as "equality for agriculture," "equality in purchasing power," "fair exchange value," prices equal to "cost of production," and "tariff effective prices." Some had in mind supporting these prices by continued contraction of agricultural production, at least until such time as foreign markets could be regained or domestic consumption overtook production, or until both combined to the same effect. Mr. Peck wished expansion rather than contraction of the agricultural plant, this to be obtained by developing new uses as well as new outlets for farm products. As for prices, he considered 10 per cent above parity a better level than parity.¹⁴

Others in the group of supporters of the act were not greatly exercised over the size of the agricultural plant, being willing to leave this largely to movements of population in response to the relative attractiveness of agricultural as compared with urban income and living. They were

¹⁴ Hearings before Senate Committee on Finance, cited in note 11.

largely willing even to let prices of farm and other products establish their own relative levels over a run of years following the depression. They were thinking mainly of preventing the extreme fluctuations in production and prices that come with cycles of overplanting and underplanting, and overbreeding and underbreeding; with the sudden introduction of new machines and techniques; with the opening up of new competing areas, or sudden loss of former markets; or even resulting from two or three years of favorable weather. This was what the "outlook" program was directed toward, and the Christgau bill. From this group came the word "adjustment" in the title of the act.¹⁵ Some of the group were also willing that prices of export products should be raised to the level of tariff protected import products until such time as tariff levels could be substantially reduced. These had supported the domestic allotment plan.

The continuing effects sought from the marketing agreements and licenses also varied widely by groups, ranging from monopoly prices at parity level or higher (to be obtained by restriction of production, processing, or market receipts and restraint on competition) to mere elimination of such clearly unfair forms of competition as misrepresentation of goods, local price cutting, and secret rebates. The "adjustment" group was opposed to any continuation of monopoly prices after the emergency, except such as might qualify under the Capper-Volstead Co-Operative

¹⁵ The statement in the body of the act is in terms of *reductions* rather than *adjustments*; but the reductions are from the high level of production of the years when the excess stocks were being accumulated. Acreages can be expanded as well as contracted within this upper limit. Thus the 1935 cotton and tobacco programs call for an increase over the 1934 acreage. The base production is high enough so that the 100 per cent of it always possible will take care of any production needs that are likely to arise in the next five or ten years. The recent amendments clinch this interpretation by substituting "adjustment" for "reduction." See Appendix A for all portions of the act here mentioned.

Marketing Act, and to all restraints upon competition designed to support monopoly prices. The interests of the marketing reform group have already been outlined.

HOW DAIRY PRODUCTS WERE INCLUDED

All the early relief measures omitted dairy products, because they were not export products. The dairy interests were relying during this period upon tariff duties, first upon dairy products themselves, and later upon vegetable oils and raw materials used in butter substitutes. Their attitude toward the McNary-Haugen and similar measures was generally hostile.

The first chance the dairy group had to become seriously interested in general agricultural reform measures was in connection with the Agricultural Marketing Act in the Hoover Administration. This act stressed co-operative marketing, in which the dairy industry was greatly concerned. With the decline and threatened extinction of the Federal Farm Board, the group's next chance was when M. L. Wilson presented the revised domestic allotment plan, with its benefit payments and processing taxes, to the two agricultural committees of Congress in the spring of 1932. In this form, the allotment plan could be applied to either import or export products. Wilson's first draft of a proposed bill was limited to "any product of which a surplus is exported." The House Committee divided on this issue and finally voted to include all farm products. This alienated enough supporters to produce a tie on the final vote to recommend favorably. The final forms of the Kleberg and Norbeck quick-relief bills included all farm products. Likewise did the Hope-Norbeck bills, the final forms which the allotment measure took at that session of Congress. Both were designed with a view to

winning as much support as possible from all the different commodity interests during the summer of the campaign. The dairy interests were not all agreed, however, that they wanted dairy products included when the conferences on the measure were resumed in the autumn after the election; and other groups strongly favored limiting it to export products. The group which drafted the bill offered to Congress in January omitted dairy products partly because they are not exported and are already protected by tariffs, and partly because the demand curve for them is believed to be such that small and large outputs sell for about the same money, so that nothing was to be gained by temporary restriction of output.

Mr. Holman, speaking for the National Co-Operative Milk Producers' Federation at the hearings in December 1932, asked to have dairy products included, but likewise asked for the restriction of use of land contracted out of crops to keep it from being used to produce dairy feeds. The bill which finally came out of the House Committee (H. R. 13991) on January 3 included only wheat, cotton, tobacco, and hogs. But by January 12, when the bill passed the House, the list had been extended to include butterfat, rice, and peanuts; and numerous other amendments proposed by representatives of the dairy interests had been added. The bill which the Senate Committee reported out restricted the measure to wheat and cotton, and eliminated the production control features. Thus were hopes of passage in the 72d Congress ended.

By this time, Mr. Peek had brought forth his proposed amendment covering marketing agreements, and the dairy representatives soon became active supporters of it and played a considerable part in its incorporation in the bill sent to Congress by President Roosevelt on March 16. They

also strongly urged the inclusion of the licensing provision. These appealed to the milk producers' associations particularly as they seemed to provide that the government would come to the support of their arrangements with dealers in the matter of prices, buying plans, and the like, and put an end to the price cutting and other alleged evils which were said to be "demoralizing" the milk markets.¹⁶ The bill as passed on May 12, by including dairy products in the list of basic commodities and retaining both the marketing agreement and licensing features, thus provided three possible lines of attack on the difficulties in the dairy industry.

Once included under the act, dairy products were certain to figure largely in administrative developments. An Administration setting out to raise the level of well-being of all agriculture that failed to include under its saving graces the 19.5 per cent of value of all agricultural production represented by dairy products would have to consider its task far from complete.¹⁷ A commodity group of this size, especially one so highly organized politically, surely would not sit back and let the government do what it would for it. More important even than mere size is the fact that under the act each city in the United States was potentially the subject of a separate marketing agreement or license. This insured a good workout on what could be done under this device.

From the standpoint of lessons to be learned by experience, dairy products stand out from the others in the original list of basic commodities in that up to the date of present writing no use has been made of the processing

¹⁶ See p. 326 of Hearings before Senate Committee on Agriculture and Forestry cited in note 12, p. 15 (testimony of Charles W. Holman, secretary of the National Co-Operative Milk Producers' Federation).

¹⁷ For 1929, the last more or less normal year.

tax and benefit payment provision, and no real production control has been undertaken. The circumstances surrounding this outcome will be especially interesting to examine. A further reason for special study of the handling of dairy products under the act is the prevailing dissatisfaction with the efforts in this field. Does this arise from faults of these efforts or from mistaken objectives? If the former, have the failures been due to the nature of the industry, to opposition from other agencies, or to mistakes in plans and procedures? ¹⁸

¹⁸ The amendments passed in 1935 are discussed somewhat at the end of Chap. V, and excerpts from them are printed in Appendix G. Besides providing specifically for fixing producer prices for milk, for methods of distributing returns to milk producers, for substitution of "orders" for licenses, for a two-thirds majority in a producer referendum on all orders, for a marketing agreement whether or not the processors or handlers want it in case two-thirds of the producers vote for it, and for using income from processing taxes for purchasing surplus farm products (including livestock), and defining the sphere of control under the term "interstate" more carefully, as indicated in Appendix G, the amendments make the following other changes:

1. Expand the parity concept to include wages of farm labor, taxes on farm real estate, and interest on farm debt. (It is estimated that this change will raise parity prices 5 per cent at present.)

2. Specify parity price as the upper limit of all price-raising activities, while providing that processing taxes may exceed within definite limits the difference between prevailing prices and parity prices, and may be continued during the "next succeeding marketing year."

3. Provide for fines for violations, instead of the revocation of licenses in the original bill, the fines being withheld until after a public hearing upon a petition by the defendant.

4. Provide that agreements may be terminated by a vote to that effect by half the producers or producers of half the volume.

5. Provide that a co-operative association may cast the vote for its members.

6. Provide for import quotas of any farm product equal to half the average annual imports of 1928-33, if the imports of the product "interfere with any program or operation undertaken under this title" (Adjustment Act).

7. Set up an elaborate control scheme for production and marketing of potatoes.

CHAPTER II

THE DAIRY INDUSTRY

The activities undertaken by the AAA with respect to dairy products can be understood only against a background of facts about the dairy industry at the time the act went into effect. This chapter and the one following will set forth the more outstanding of these facts. Many of these will already be familiar to those active in the dairy field; but this volume seeks to inform the general public in its thinking about the dairy industry fully as much as those in the industry itself.

PRODUCTION

The 1930 census reported 6,289,000 farms, of which 4,615,000 had one or more cows.¹ Of these latter, 29 per cent had only one cow in 1933, according to Department of Agriculture estimates, and an additional 28 per cent had but two or three. This leaves only about two-fifths of the milk-producing farms with four or more cows.² To one reared in the dairy sections of the Mid-West, a farm with not more than ten milk cows does not seem like much of a

¹ The 1930 census omitted a large number of farms, mostly of the smaller sizes. Hence the number of cows was not affected as much as the number of farms. The total effect was considerable, however, since the omission affected some of the dairy areas especially—the Northeastern, Great Lakes, and Pacific Coast states. Preliminary data indicate that most of these omitted farms will be included in the 1935 census, many of the states in these regions having reported over 10 per cent more farms in 1935 than in 1930.

² The data in this chapter for years since 1930 are rough estimates made by John A. Shepard and Richard K. Smith of the Division of Crop and Livestock Estimates and published in *Milk Production Trends, Statistical Supplement 9*. They were made by applying percentage estimates of changes to the 1930 census data. Other data from this source are based upon special inquiries among crop correspondents.

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dairy farm. Yet only 515,000 farms, or about a tenth of the 4,867,000, are estimated thus to have qualified in 1933. In terms of number of cows, however, 39 per cent were on farms having more than ten cows, and an additional 28 per cent on farms having between six and ten.

- The dairy products with which a program of production and marketing adjustment is primarily concerned are those which find their way into the market. Of dairy products sold in one form or another, 53 per cent was from farms having more than ten cows, and only 17 per cent from farms having five or less. Less than 1 per cent was from one-cow farms, and only 6 per cent from farms of two or three cows. It would therefore appear that adjustment programs need give little attention to milking herds of less than four cows.

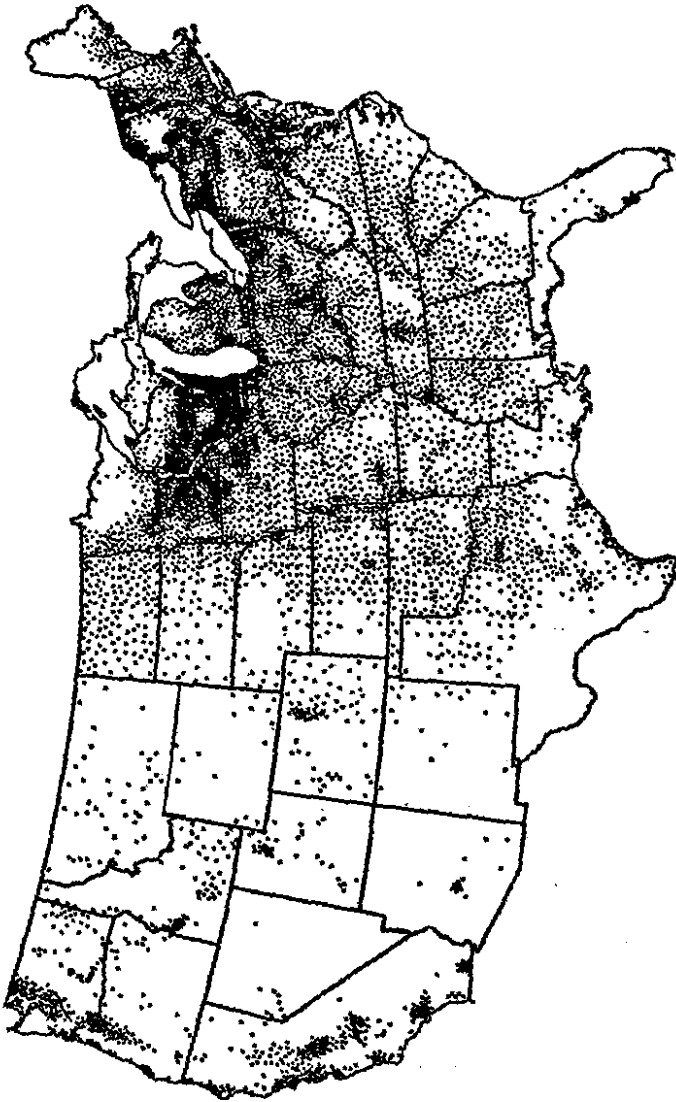
The census of 1930 also made a classification of farms according to proportion of income derived from various sources. "Dairy" farms were defined as those on which 40 per cent or more of the farm value of product "was derived from the dairy herd as dairy products, dairy cattle and veals." About 605,000 farms, averaging 11.8 cows per farm, or 9.6 per cent of all farms, were put in this class. However, 65 per cent of the milk cows in 1930 were on other types of farms, divided as follows: 21 per cent or 926,000 on "general" farms³ averaging 4.6 cows per farm; 12 per cent or 408,000 on "animal specialty" farms⁴ averaging 5.8 cows per farm; 10 per cent or 970,000 on "cotton" farms⁵ averaging only 2.0 cows per farm; 8 per cent or

³ Farms on which the value of products from any one source did not represent as much as 40 per cent of the total value of all products of the farm.

⁴ Forty per cent or more of the total value of all products consists of meat animals of all classes, such as beef cattle, sheep, and hogs, and of wool and hair. Stock ranches are not included.

⁵ Cotton (lint) and cottonseed represent 40 per cent or more of total value of all products.

DAIRY COWS AND HEIFERS ON FARMS AND RANGES, JANUARY 1917



* Map of Bureau of Agricultural Economics, U. S. Department of Agriculture, based on census data covering 20,714,000 animals.

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351,000 on "cash grain" farms⁶ averaging 4.9 cows per farm; 3.5 per cent or 256,000 on "crop specialty" farms⁷ averaging 2.8 cows per farm; 3.4 per cent or 366,000 on "self-sufficing" farms⁸ averaging 1.9 cows per farm; and the remainder on 582,000 fruit, truck, poultry, stock-ranch, part-time, and other abnormal farms or unclassified farms averaging less than three cows per farm.

Apparently a production and marketing adjustment program cannot be confined to the 605,000 dairy farms. It must take into consideration the large numbers of other farms which have enough cows to make their production an integral part of the dairy industry. Fully as important, any program for other products raised on these farms is certain to have its effects on their dairy production.

The geographical distribution of dairy production is best indicated for some purposes in terms of density of milk-cow population, as in the map on page 27, in which each dot represents 2,500 milk cows or dairy heifers on farms in 1925. Obviously, in areas in which production is as concentrated as around such cities as Chicago, Milwaukee, Minneapolis, and St. Paul, milk for fluid consumption must be hauled only short distances. St. Louis, however, must reach out somewhat farther.

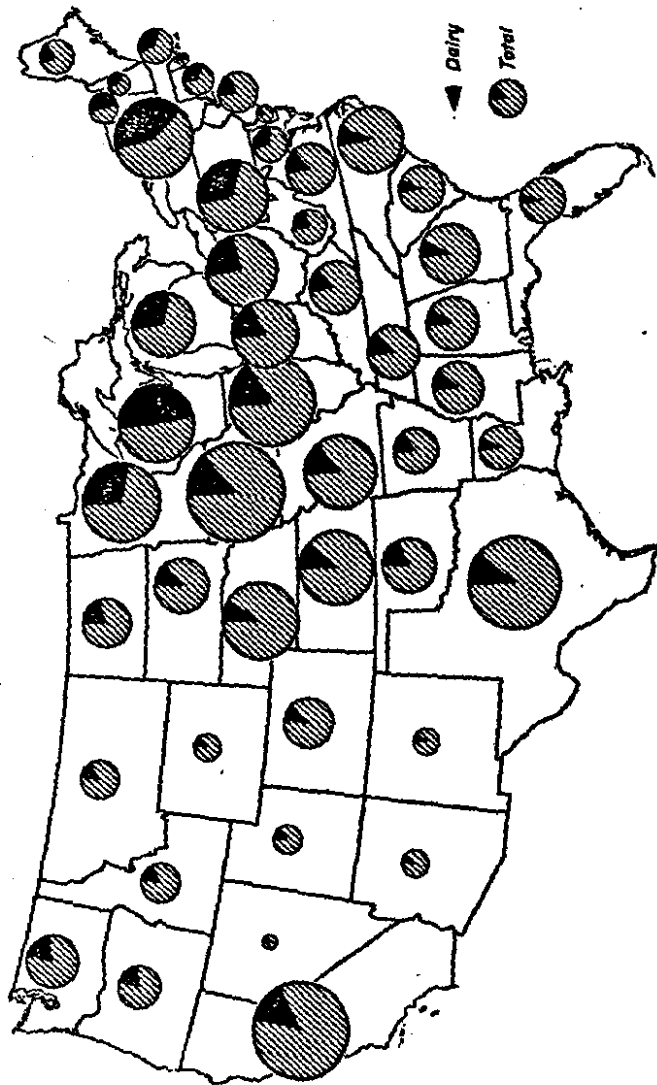
The map on page 29 shows variations in the proportion of farm income derived from dairy herds in the census year 1930. Vermont farmers are more largely dependent upon dairy income than those in any other state, several other Northeastern states following close after. Of the Mid-West states, Wisconsin stands out first in this respect.

⁶ Corn, wheat, oats, barley, flax, rye, rice, and grain sorghum represent 40 per cent or more of total value of all products.

⁷ Forty per cent of the total value of all products represented by such crops as sugar cane, sugar beets, soybeans, tobacco, hay, peanuts, or potatoes.

⁸ Fifty per cent or more of the total value of all products of the farm was used by the family.

GROSS FARM INCOME FROM DAIRY PRODUCTION
 TOTAL FARM PRODUCTION, 1930^a



^a From *Negative 23839*, Bureau of Agricultural Economics, U. S. Department of Agriculture.

About a third of all the specialized "dairy" farms, according to the census definition, were in the North Atlantic states in 1930; another third were in the two North Central groups of states, mostly in the Eastern group; about one-tenth in the Western states; and only 3.5 per cent in the Southern states. These data are significant as indicating the geographic distribution of interest in dairy programs under the AAA, and of consequent pressure in balancing conflicts of interests. The more largely the farmers of an area depend upon dairying as a source of income, the more intense is their interest in dairy programs.

Three-fourths of all the one-cow farms, and half of the two- or three-cow farms, are in the Southern states. On the other hand, one-half of the four- or five-cow farms and two-thirds of the 6 to 20 cow farms are in the North Central states. The North Atlantic states have the most farms in the size groups from 21 to 50 cows, although the Western and Southern states have relatively large numbers of farms with herds of these sizes. Of farms having herds above 50 cows, the Western, North Atlantic, and South Central states have the largest numbers. Of farms having over 100 cows, California had 526 in 1929, Texas 105, New York 67, Florida 44, Alabama 40, New Jersey 36, and Virginia 32, out of a total of 1,209 in the country. Wisconsin had only 17 and Minnesota and Iowa together only 6. The larger herds mostly produce milk for fluid consumption. Many of their owners are the so-called producer-distributors of which we shall hear more later.

Production per cow and butterfat test vary by sections mostly according to the prevailing breeds. According to some rough preliminary figures,⁹ the fluid milk area of the

⁹ Based on reports of Bureau of Agricultural Economics crop reporters for their farms.

North Atlantic states has, out of each 100 milk cows, 50 of the large low-testing Holsteins and 35 of the smaller high-testing Jerseys and Guernseys, as compared with 15 for all other breeds—a milk production per cow of 5,320 pounds in 1929. The more largely butter- and cheese-producing area of the East North Central states has comparable numbers of 36 and 39 for the aforesaid breeds, and 11 for the moderately low-testing dual-purpose Shorthorns, with a resulting milk production per cow of 5,040 pounds. In the West North Central states, largely butter producing, with dairying likely to be a side-line enterprise, the dominant breed is the Shorthorn, the numbers being 32 for this breed, 24 for Holsteins, and 19 for the Jerseys and Guernseys. The milk production per cow of 4,200 pounds reflects the dual-purpose quality of the Shorthorns. In the two Southern groups of states, the numbers are strongly reversed, 8 for the Holsteins as against 61 for the Jerseys and Guernseys and 6 for the Shorthorns, with production per-cow falling to 3,560 pounds. In the Western states the numbers are 37 for Jersey and Guernseys, 27 for Holstein, and 15 for Shorthorns—a production per cow of 5,440 pounds.

The 1930 census endeavored to obtain data on numbers of beef and dual-purpose cows which were milked in 1929. The enumerators' returns were badly confused, and much too low—3,372,000 out of a total of 21,124,000 such cows reported milked. The figures doubtless have some value in indicating the variations by section—from 17 per cent of all cows for the North Central states to 6 per cent in the South and 2 in the Northeast. A large number of such cows, such as are found in the North Central states, contribute considerable elasticity to the supply of milk. If the price of butter or milk rises relative to that of beef, more cows are milked and fewer are used to rear calves to be

fattened later as steers and beef heifers. Such shifts can take place noticeably within a few months.

The different sections vary even more significantly in amounts and proportions of grain and forage fed to milk cows, and purchased or grown at home. Dairymen in the North Atlantic and Western states purchase three-quarters of the grain and concentrates fed to milk cows, and those in the North Central states only a fifth of it. The comparable fraction for the South is two-fifths. The dairymen in the Northeast and other fluid milk sections also feed relatively more grain and concentrates and less roughage. Much of this area is not well adapted to producing forage other than hay, and the hay does not run sufficiently to clover and other legumes to make a good roughage base for a ration. Even where the climate is favorable, the soil may be worn and require heavy applications of fertilizer. These statements apply even more to grain than to forage. If feed must be purchased, it is cheaper to transport grain than forage. On most farms in New England, and on many of them in the other North Atlantic states, dairymen find it economical to buy a large part of their grain rather than to produce it, and to buy grain rather than to produce some additional forage that might save buying part of the grain.

In contrast, dairymen in the Mid-West, except those very near to large cities, normally are able to produce all of the forage which they need on their own farms, and find it advantageous to substitute, within limits, forage for grain.

The Southern dairy farmers feed a trifle less forage and a little more grain per unit of milk than those in the Mid-West, even though they must buy two-fifths of their grain at prices about 40 cents per hundredweight higher than

the Mid-West prices.¹⁰ Dairymen in the West feed a ration very low in grain, which they must purchase in large part at relatively high prices.

DISPOSAL OF MILK

According to the 1930 census, 1,556,000 farmers reported sales of cream as butterfat, mostly for manufacture into butter; 644,000 reported sales of farm-made butter; 893,000 reported sales of milk, mostly for fluid milk consumption or conversion into cheese or concentrated milk; and 68,000 reported cream sold by the gallon. Between 1,500,000 and 1,600,000 farmers—mostly the one-cow farmers—reported milk produced but no sales. Thus only about 3,000,000 farmers at the most would figure in plans for control of commercial production.

The census data fail to indicate the final form in which milk is consumed. Reports from processors indicate that 33 per cent of the milk produced in 1931 went into factory butter; 5 per cent into cheese; less than 4 per cent into evaporated, condensed, or malted milk; 3 per cent into factory ice cream; and one-tenth of a per cent into powdered whole milk or cream. Total butter production, with farm production included, was 44 per cent of the total. An estimate of 3 per cent is accepted for milk fed to calves. This leaves 41 per cent consumed as fluid milk or cream in city and farm homes, hotels, restaurants, and the like. Reports of city health departments furnish the basis for a crude estimate that 32 per cent out of the 41 per cent of fluid consumption was by the non-farm population. No data are available separating fluid milk from fluid cream consumption.

Adjustment programs must be concerned mostly with the dairy products that enter into commercial channels.

¹⁰ As in 1932.

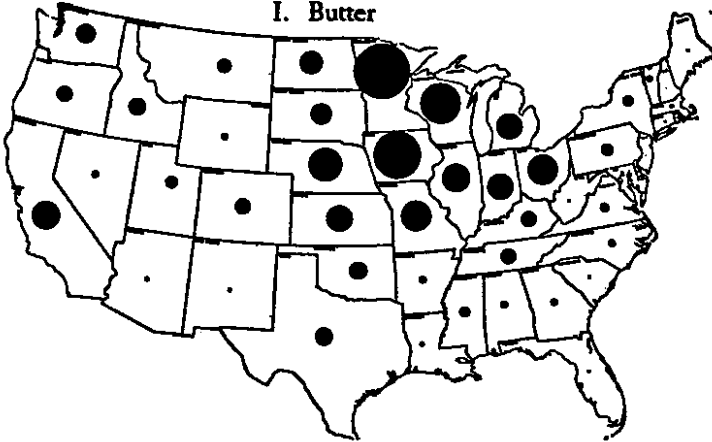
These would appear to be about 75 per cent of the total, divided about equally between fluid milk and cream for city family consumption, and the rest as indicated above. Apparently between a fifth and a fourth of the fluid milk and cream sold to families is distributed by its producers.

Regional differences in the disposition and the utilization of milk are significant factors in the situation. The accompanying map indicates a rather high degree of regional concentration of factory production of butter, cheese, and concentrated milk. Outside of these areas of concentration, most of the milk is consumed as fluid milk or cream or made into butter on farms. Thus, in the North Atlantic states in 1929, only 4 per cent of the milk was sold as butterfat in the form of cream, presumably to be made into factory butter. In the South Atlantic states, the comparable figure was 8 per cent. In the South Central states, it was 24 per cent, but farm-made butter represented 32 per cent of the total. In the West North Central states, the great area of concentration for factory butter, 66 per cent of all milk was sold as butterfat. In the East North Central states, as in the North Atlantic states, utilization as fluid milk and cream, combined with a relatively limited amount of use in cheese and concentrated milk, bulks larger than use in butter in all states except Wisconsin, where cheese production predominates. In the Western states, utilization was about evenly divided between manufactured products and fluid milk and cream. The South Central states converted 31 per cent of their milk into butter on farms, and 24 per cent into factory butter.

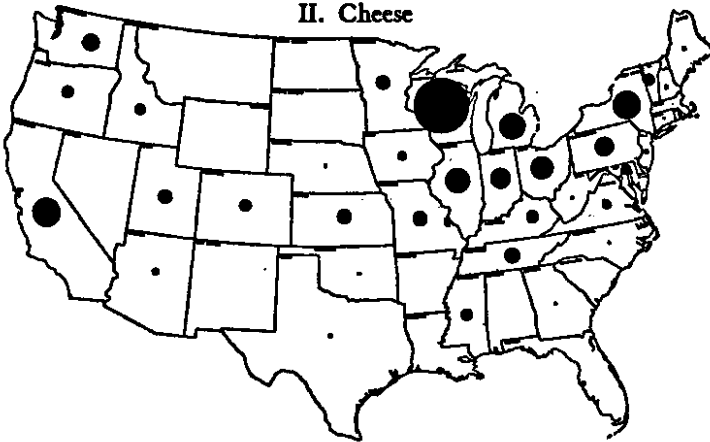
* The circles in the map showing evaporated and condensed milk represent 2.6 times as many pounds of product as do circles of the same size in the maps showing butter and cheese, but a pound of such milk represents only 22.5 per cent as much whole milk as does a pound of cheese, and 10.7 as much as a pound of butter. Adapted from *Negatives 21881, 21922, and 20268*, Bureau of Agricultural Economics, U. S. Department of Agriculture.

DISTRIBUTION OF PRODUCTION OF SPECIFIED DAIRY PRODUCTS, 1929 ^a

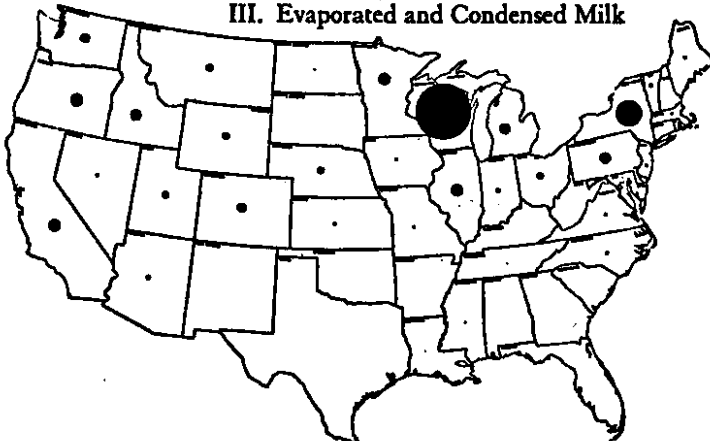
I. Butter



II. Cheese



III. Evaporated and Condensed Milk



^a See opposite page for note.

CONSUMPTION

Reduced to a per capita basis, in 1929 the total consumption of dairy products was 810 pounds of milk, or 94.5 gallons. Butter consumption was 17.3 pounds per capita; cheese consumption, 4.6 pounds; condensed milk, 2.7 pounds; evaporated milk, 13.8 pounds; ice cream, 3.0 pounds; and fluid milk and cream, 350 pounds.¹¹

Such data as are available showing the variations in consumption of dairy products by regions indicate a range in cities and villages from 0.7 pints daily per capita of milk consumed in the form of whole milk and cream in the Southern states, to 1.0 pints in the North Atlantic states. Farm consumption is larger than urban consumption. Southern farm families consume more farm-made butter than Northern farm families, but less farm-made and creamery butter combined.

The government estimates of per capita consumption for the whole population, obtained by dividing the data on utilization by the estimated population for the year, indicate an increase for butter of nearly a fifth between 1917, the first year of the estimates, and 1926, then a decline to 1929. Cheese consumption increased to 1925 and held. Consumption of concentrated milk increased by two-thirds from 1917 to 1929. Ice-cream consumption gained steadily to 1929. Consumption per capita of milk as fluid milk or cream increased steadily to 1931. The increase from 1917 to 1929 was more than a third.

Domestic per capita consumption of fluid milk, cream, and concentrated milk does not fluctuate noticeably from

¹¹ See Appendix B for details of data used in this section. All data on changes in consumption of dairy products need to be adjusted for the decrease in number of milk cows not on farms (family cows kept in villages and towns). One calculation recently made indicates no increase in per capita consumption since 1900 if such an adjustment is made.

year to year in ordinary times.¹² The changes are in the nature of trends. It takes a business depression or a price upheaval to reverse these trends. Ordinary changes in prices such as occurred between 1921 and 1929 have no appreciable effect on the consumption of these products. Milk dealers have sometimes observed that purchases are less for a week or two after a sudden jump in milk prices; but seldom do these effects hold. No doubt, however, continued high prices will gradually accumulate a significant depressing effect on consumption, and continued low prices the opposite. Data on milk consumption are too scanty to furnish any acceptable measures of these effects. In the actual figures they are obscured by the general trend toward greater consumption since 1920. The effects of depression will be analyzed later.¹³

Butter and cheese are the final claimants of all milk that is not used as fluid milk, cream, concentrated milk, or ice cream. Our tariff barriers are so high that, except in very abnormal situations like the present, no butter and very little cheese other than special foreign types enter United States markets. The import restrictions of other countries and relatively low foreign prices prevent any exports. In consequence, each year we literally eat the butter and cheese that we produce. If the output is large, the price must sink low enough to bring about its consumption. Fortunately the response of butter and cheese consumption to prices is stronger than that of other dairy products. The 3.5 per cent decline in butter consumption per capita from 1926 to 1928, no doubt occurring because less milk was left over to go into butter and cheese in these years, was accompanied by only a 6 per cent rise in prices. A similar description fits cheese consumption and prices in this period.

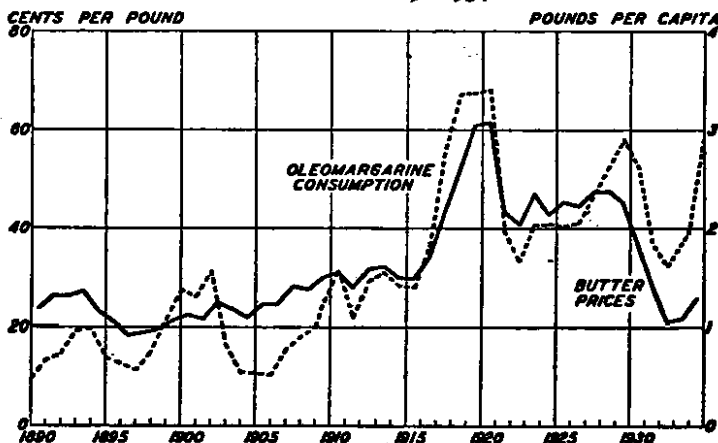
¹² The same.

¹³ See p. 78.

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A factor in consumption of butter is the tendency of consumers to substitute oleomargarine increasingly for butter whenever the price of butter rises above 35 to 40 cents per pound, at post-war general price levels, as indicated in the accompanying chart. At present price levels, if we may

THE RELATION OF BUTTER PRICES AND OLEOMARGARINE CONSUMPTION, 1890-1934^a



^a Adapted from *Negative 18885-B*, Bureau of Agricultural Economics, U. S. Department of Agriculture.

judge by the large substitution of oleomargarine for butter since December 1934, the shift sets in before 30 cents is reached. Oleomargarine consumption averaged between 2 and 3 pounds per capita between 1920 and 1931, with butter consumption around 17 pounds. At the lower scale of butter prices, consumption expands more freely because of the substitution of butter for other cooking fats.

DISTRIBUTION

Several problems arising in the course of this analysis will call for information concerning the ways in which the

several dairy products pass from producer to consumer. The general facts of pertinence should be introduced into the framework of reference at this time.

The marketing of butter must be considered separately for *local creamery butter*, made from more or less sweet cream or whole milk delivered every day or two to nearby small creameries; *centralizer creamery butter*, made mostly from sour cream shipped or hauled longer distances at less frequent intervals; and *farm butter*, made from hand-skimmed or machine separated cream.

Local creamery butter is generally of good quality, but is poorly standardized, although certain large sales organizations—for example, Land o' Lakes Creameries, Inc.—have made much progress in this direction, partly by obtaining better care of the cream, and partly by sorting the butter after it is manufactured. Centralizer butter is more uniform in quality, but made mainly from poorer raw materials.

Until ten years ago, local creamery butter was mostly consigned to commission men located in a few central markets, or contracted to wholesale buyers, who in turn sold either to retailers in the various consuming centers, or to jobbers who sold to retailers. Today a sizable fraction of it is contracted by large co-operative sales organizations, chief of which is the Land o' Lakes Creameries, Inc.,¹⁴ directly to chain-store organizations, or is distributed through branch houses to dealers in consuming centers. Some chain-store organizations contract directly with local creameries.

The manufacturers of centralizer butter distribute it as advertised brands to jobbers, retailers, and chain-store or-

¹⁴ This company sells the output of about 450 creameries, most of which are in Minnesota and Wisconsin.

ganizations. Larger meat packers also handle it as a sideline through their system of branch houses.

In 1933, co-operative creameries made 37.5 per cent of all the creamery butter, most of it in local creameries. The Farm Credit Administration has record of 1,359 co-operative creameries operating in 1933. In Minnesota, the foremost butter state, 649 out of 843 creameries were co-operative in 1933.

Farm-made butter is largely of poor quality and completely unstandardized. What is not sold locally by producers, or resold locally by the merchants who take it in trade, is shipped to central markets.

Natural American and foreign types of cheese are made in small cheese factories ordinarily with 15 to 35 patrons, half of them living within half a mile of the factory. About a fourth of these factories are co-operative. In 1930, Wisconsin had 2,200 cheese factories as compared with 500 creameries. The independent local cheesemakers sell mostly to wholesale cheese buyers who sell to jobbers and retailers. Some of the co-operatives sell through national co-operative sales agencies. In the past decade, an increasing number of cheese factories have been operated as units in chains owned by large cheese corporations. These organizations manufacture much "processed" or remade cheese, which they distribute along with natural cheese, using much the same methods as the centralizer creamery organizations. The soft cheeses—cottage, Philadelphia, Neufchatel—are made by local dairies to a large extent and distributed on milk routes.

The majority of the condenseries are operated as units in one of several large chains which sell their product as advertised brands through the usual trade outlets. The independent condenseries either sell to brokers or contract

with manufacturers of food products using concentrated milk. A few milk distributor organizations operate condenseries as side-line enterprises as an outlet for surplus milk, as do a few co-operatives of the type which handle their own "surplus."

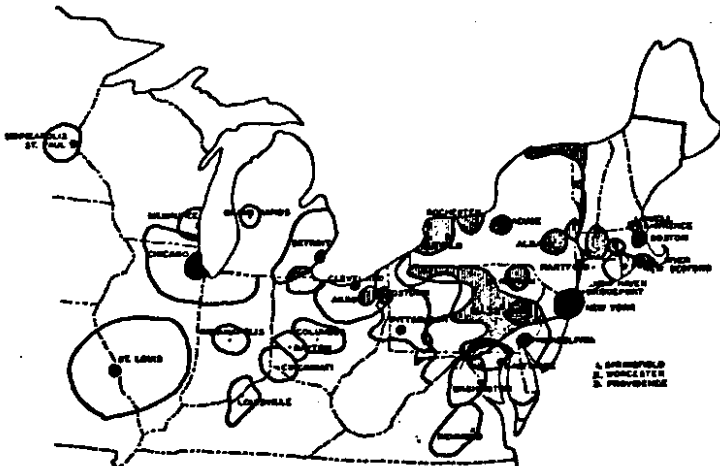
The business of manufacturing and selling ice cream is highly irregular in its organization. At one extreme are the large specialized plants with well-developed sales organizations of their own, and the plants that combine ice cream with other dairy products such as milk and butter. At the other extreme are many retail establishments—drug stores, restaurants, candy stores, etc.—which make their own ice cream. Many milk distributors sell ice cream as a side-line. The specialized plants usually deliver to retail establishments. Recently some of these have set up chains of retail outlets handling ice cream and related products.

The outstanding character of the market for fluid milk and cream is its essential decentralization into a large number of local sub-markets, one for each city, town, or village of any size. It would be a serious mistake not to realize, however, that these are all part of one large market for dairy products as a whole, made so by reason of the fact that the fluid uses of milk and cream compete with the manufactured uses of it, and that supplies flowing into these local markets shift from one use to another whenever the prices change relatively. These interrelations are not equally close in all local markets. In some small Southern and Western markets, the only real competition is between fluid milk, fluid cream, and farm-made butter. The latter usually competes with butter from other areas, although at a lower scale of prices. In markets a little larger, local cream may compete with cream from other areas. In some Eastern areas, the competition may be largely in terms of

cream and milk from other areas, which are very likely to compete with butter, cheese, or concentrated milk in their own territory.

The area from which the fluid milk and local cream for an urban market flows is commonly called its "milkshed." The accompanying map sets forth the milksheds of the

BOUNDARIES OF MILKSHEDS IN THE NORTHEASTERN INDUSTRIAL SECTION *



* Lined and cross-hatched areas indicate overlapping milksheds. From John M. Cassels, *A Study of Milk Prices*, to be published shortly by Harvard University Press.

larger cities in the Northeastern industrial section of the United States. It will be noted that some of these milksheds overlap. This means that some of the farmers in the overlapping territory are selling in one market and some in another. The overlapping is usually more than appears on this map, for within the larger milksheds there may be a score or more of sizable smaller milksheds, to say nothing of areas which supply towns and villages. Thus Harrisburg is within the Philadelphia milkshed, and Mt. Clemens

within the Detroit. Such markets are called "secondary" in pages following.

In most milk markets, the milk and cream come from the same general area, the cream usually more largely from the more distant parts of the area. This general area is all considered to be within the milkshed. Outside areas supplying local deficits of cream are not considered as coming within the milkshed.

The agencies now handling milk and cream in various local markets are as follows:

1. Distributors buying all their milk and cream and retailing it to final consumers.
2. Dealers buying all their milk and cream and selling it at wholesale to hotels, restaurants, hospitals, stores; perhaps also to small distributors or peddlers.
3. The two above in combination—selling both at wholesale and at retail.
4. Co-operative producers' associations which do not receive milk, but merely arrange the terms of its sale to distributors—the so-called "bargaining associations." The distributors ordinarily pay the producers directly and handle any excess above current consumption of fluid milk and cream.
5. Co-operative associations which receive the milk themselves, pay their members for it, and handle the excess themselves.
6. Co-operatives which sell their members' milk and cream at retail.
7. Cream brokers, who are wholesale receivers and distributors of cream mostly from outside the regular milkshed.
8. Stores which retail milk:
 - (a) Cash-and-carry groceries—usually chains.
 - (b) Grocery stores which deliver—usually independents.
 - (c) Dairy products stores—usually chains.
9. Dealers who act as intermediaries between wholesalers and stores—sometimes called "intermediates."
10. Milk peddlers who buy from wholesalers or direct from producers and sell at retail.

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11. Producer-distributors—producers who distribute their own milk at wholesale or retail or both, perhaps buying additional milk, especially at slack periods, from neighbors, wholesalers, or co-operatives.

12. Cut-rate milk depots, roadside stands, etc. Stores may function in a similar way.

Milk distributors, especially the larger ones, commonly also retail buttermilk, skim milk, chocolate milk, and cottage cheese from their wagons. Many also handle butter, and in some markets, cheese in addition, and perhaps even eggs. Recently some distributors have begun selling tomato juice and orange juice. Small distributors may not have the volume needed for manufacturing by-products advantageously. Many milk distributor companies also manufacture and sell ice cream as a side-line. Two large nationwide companies—the Borden Company and the National Dairy Products Corporation—also manufacture condensed and evaporated milk. Some excess milk of local markets finds its way into dry whole milk, dry skim milk, and casein.

In the very large cities, nearly all of the milk for family consumption is retailed by regular distributors, or through stores. In the very small cities, most of it is retailed by the producers themselves. The producer-distributors are relatively more important in the South and West than in the East and North. Thus, according to reports from boards of health, 60 per cent of all the fluid milk and cream consumed is furnished by producer-distributors in Atlanta, Georgia; 40 per cent in Birmingham, Alabama; 50 per cent in Kansas City, Missouri; and 40 per cent in Omaha, Nebraska. In contrast, only 0.9 per cent is furnished by producer-distributors in the Philadelphia market; about 1 per cent in New York; and none in Cleve-

land, Ohio. City ordinances requiring that all milk be pasteurized may stop nearly all delivery of milk by producers, although pasteurizing on a small scale has recently been greatly facilitated by improved devices.

Such data as are available indicate that in 1933 retail stores distributed between 11 and 43 per cent of the fluid milk consumed in homes in a number of cities. Examples are the following:¹⁵

City	Per Cent
Allegheny County (Pittsburgh), Pa.....	43
Baton Rouge, La.....	37
Kansas City, Kan. (includes hotels and restaurants).....	34
Reading, Pa.....	30
Sharon, Farrell, and Sharpsville, Pa.....	27
Akron, Ohio.....	21
Columbus, Ohio.....	20
Williamsport, Pa.....	12
Philadelphia, Pa.....	11

Studies in eight New York cities reported by Cornell University in 1934 showed a range from 11 per cent in Binghamton to 33 per cent in Buffalo. Some data and estimates assembled by the International Association of Milk Dealers for 70 cities in the United States show a range from 6 to 85 per cent, the bulk being between 20 and 50 per cent, and the average being 35 per cent. These estimates, however, probably include hotel and restaurant sales in many instances, and perhaps other wholesale sales in addition.

Data are not generally available as to the proportion of sales of cream through stores. In Pittsburgh, Reading, and Rochester the stores sell less of the cream than of the milk;

¹⁵ The data for Pennsylvania cities are from *Technical Paper 659* and other studies made by T. K. Cowden and assistants and published by the Pennsylvania Agricultural Experiment Station.

and in the two other Pennsylvania areas, the reverse. In Boston, the stores sell more of the cream than of the milk; and this is apparently true of other large cities in the East. Families not buying cream regularly tend to order it from stores along with their groceries, finding this simpler than contacting the milk-wagon driver.

The volume of store sales of milk seems to have depended in considerable measure upon the access of stores to sources of supply of good milk. In some markets, where dealers or co-operative associations have refused to sell to stores except at prices slightly under retail prices, they have handled milk only as a convenience to their customers. In other markets, the stores have been aggressive in obtaining independent sources of supply and have sold at retail prices somewhat under the regular prices.

Hotels, restaurants, hospitals, and similar agencies consume from 3 to 21 per cent of the fluid milk sold in different cities for which data are available, and from 8 to 28 per cent of the cream, as indicated in the following table:¹⁶

	Milk	Cream
Akron, Ohio.....	21	—
Columbus, Ohio.....	20	—
Baton Rouge, La.....	16	10
Williamsport, Pa.....	14	23
Allegheny County, Pa. (Pittsburgh).....	13	28
Alameda County, Calif.....	10	—
Reading, Pa.....	8	17
Sharon, Farrell, and Sharpsville, Pa.....	3	8

The remainder of the business is mostly handled by distributors whose principal undertaking is the retailing of milk from wagons direct to homes. For various reasons, this business tends to be concentrated in the hands of a

¹⁶ Cowden, Pennsylvania Agricultural Experiment Station studies.

relatively few companies in many markets. In Washington, about 98 per cent of it was handled by six companies in 1933; in Los Angeles County, California, 40 per cent by three companies; in Reading, Pennsylvania, 53 per cent by three companies; in Williamsport, Pennsylvania, 48 per cent by three companies; and in Philadelphia, 85 per cent by four companies.

Recent discussion of milk market problems has tended to throw milk distributors in three classes: the large distributors already mentioned, a larger number of middle-sized distributors, and a still larger number of very small distributors, the latter group in practice including the producer-distributors already mentioned. A classification of dealers on this basis shows that 15 small dealers handled only 2 per cent of the fluid milk in Washington in 1933; 59 handled only 18 per cent in Baton Rouge; 94 handled 5 per cent in Columbus, Ohio; and 36 handled 5 per cent in Akron, Ohio.

In the discussion of issues developed in later chapters, we shall see the three foregoing groups frequently taking sides in various combinations. Many markets have a so-called "independent milk dealers' association" including the more important of the very small dealers and some or all of the middle-sized dealers.

The situation is further complicated by reason of the fact that many of the distributing companies in local markets are units in nation-wide or regional marketing systems. In 1929, the Borden Company with 41 subsidiaries and sales of 328 million dollars was the largest of the systems, the National Dairy Products system with 73 subsidiaries having only 300 million dollars of sales. By 1933, the National Dairy Products system had outgrown its principal competitor in volume of sales. Both of these companies

process and sell dairy products other than milk and cream. This is even more true of the Beatrice Creamery Company, the third national system in size, with 55 subsidiaries and 84 million dollars of sales in 1929. The United States Dairy Products Corporation has 14 subsidiaries, and the Fairmont Creamery Company only 5 major subsidiaries. In addition to these 5 national systems, perhaps 15 others can be classified as local or regional systems doing business in one or several adjoining states—such as the Golden State Company in California.

Most of the larger cities or urban areas of concentration now have one or more co-operative milk producers' associations in their milksheds. The number of such associations has grown rapidly of late, from 14 in 1914 to more than 150 in 1933. Members of the principal co-operatives apparently furnish from 70 to 90 per cent of the fluid milk sold in such markets as Chicago, Philadelphia, Boston, Baltimore, Washington, Detroit, and Minneapolis-St. Paul. In other markets, such as New York, St. Louis, and Kansas City, the proportion runs around 50 per cent. The secondary co-operatives which are found in some milksheds tend to be small. In Alameda, California, however, one such co-operative supplies 25 per cent of the fluid milk. In the Boston milkshed, three such co-operatives furnish at least 15 per cent of the fluid milk. In Columbus, three furnish 12 per cent of the milk. Some of these smaller associations are set up in secondary milk markets where a larger co-operative is also operating.

A number of the larger milk producers' associations operate over a reach of territory taking in important secondary markets. Thus the Michigan Milk Producers' Association markets milk in ten sizable cities in Michigan outside of Detroit. The New England Milk Producers'

Association operates in all the cities of southern New England outside of Connecticut and a few outlying points. The Dairymen's League Co-Operative Association supplies approximately 50 per cent of the daily milk supply of metropolitan New York City (including Newark and Jersey City, New Jersey), 45 per cent of the supply of Albany, 80 per cent of the supply of Buffalo, 65 per cent of that of Rochester, 50 per cent of that of Syracuse, 70 per cent of that of Poughkeepsie, 60 per cent of that of Utica, 70 per cent of that of Elmira, 50 per cent of that of Binghamton, 35 per cent of that of Jamestown, and 70 per cent of that of Scranton. It also produces products such as butter and cheese and milk powder, which it markets under the well-known "Dairylea" trade mark. It had 50,939 active members on March 31, 1933.

A majority of these co-operatives are bargaining associations. That is, for a small deduction from the producers' check, ordinarily made by the milk distributors and turned over to them, they negotiate prices, terms of sale, charges for transportation, receiving station charges, and all similar matters of concern to the members; ordinarily guarantee the members payment for their milk; check the weighing and testing of the milk; and look after the members' interests in city, state, and federal affairs. Of associations of the other type, which actually receive and dispose of the milk, the best example is the Twin Cities Milk Producers' Association of Minneapolis-St. Paul, which has 13 receiving plants in which 58 per cent of the milk received in 1932 was converted into manufactured products. Other such associations are the Des Moines Co-Operative Dairy Marketing Association, which manufactured approximately 60 per cent of the milk received in 1933, and the Dairy Co-Operative Association of Portland, Oregon.

In milk markets with the producers well organized and most of the distributing in relatively few hands, prices to farmers and to consumers have tended to be determined largely by negotiation between these two groups. The minority interests in these markets and milksheds have operated sufficiently in line with the terms of the majority agreements during most of the time so that these terms have been maintained. Only when the terms were clearly unreasonable has the minority tended to break them down.

Such a procedure for price establishment did not develop in a day. Efforts along this line during the World War brought officers of co-operatives into court charged with violating anti-trust laws. But state legislatures presently passed acts exempting agricultural co-operatives from such prohibitions; and in 1923 Congress passed the Capper-Volstead Act granting all co-operatives power to sell collectively as long as they do not *unduly enhance the price*.¹⁷

This power, however, was not extended to the milk distributors. They were not given freedom under the Capper-Volstead Act to organize and buy collectively. In theory, the negotiations which they have since carried on with the organized producers have been merely discussions of the supply, demand, and price situation in the market. The bargains have been consummated when the dealers a few days later have signed contracts sent out by the association offering to sell them their supply of milk at prices based on the discussions, the other aspects of the transactions being covered by some standing arrangement that is continued from month to month. Representatives of government have on a few occasions sat in on these price discussions to see whether the letter and spirit of the anti-trust acts for the distributors, and of the Capper-Volstead Act for the producers, were being observed.

¹⁷ See Edwin G. Nourse, *Legal Status of Agricultural Co-Operation*.

An important aspect of the situation above described is often overlooked in discussion, namely, the helplessness of any one distributor handling a sizable volume in a market in which the producers' association controls two-thirds or more of the supply. He may, for example, oppose a price increase, preferring to hold the resale price and price to consumers where they are; but if the other dealers will not join him, the producers' association has only to refuse to supply him with milk and he is well-nigh helpless. The milk not controlled by the producers' association is probably all contracted for by the regular "independent dealers" (those not buying through the association). He cannot go outside the milkshed because of the extra transportation cost, and besides, because not enough farms have been inspected. If he had a few months in which to develop new sources of supply, he might succeed; but in the meantime his customers would leave him. Accordingly he finds that he must go along with the other dealers. (Not infrequently the outcome is a concession to the dealers of a little of the increase to the consumers.) Finally, the dealers as a group may at times find themselves threatened with loss of supply through a general producers' strike directed by the association. Pressure of both these types has been exerted rather freely upon dealers in the last few years.

The discussion of distribution of dairy products is not complete without at least a few brief statements on margins or spreads between producer and consumer prices. Later chapters will return to this subject in various connections. In general, margins on manufactured dairy products are relatively low, and those on milk and cream relatively high. This statement must not be taken as commendation of one group of purveyors and condemnation of the other. The jobs of distribution are very different.

The first handling expense encountered by butter on its way to the consumer is for processing and selling by the local creamery. This averages around 3 to 4 cents per pound in the principal dairy sections. One pound of butterfat, when combined with the usual amount of water and salt, usually makes between 1.21 and 1.24 pounds of butter. Butterfat prices to farmers should be enough higher than butter prices to cover this "overrun" less the costs of processing and selling.¹⁸ The published farm quotations on butter and butterfat do not represent the same groups of producers. The second handling expense includes transportation to market and wholesaling. The spread between Minnesota butterfat prices converted to a butter basis, using a 1.23 overrun, and the New York wholesale prices of 92-score butter, averaged 7.7 cents in 1925-29. This will not be the correct spread unless 92-score represents average quality Minnesota butter. The freight per pound to New York on carload lots in this period was 1.5 cents. The spread between prices to wholesalers and retail prices of creamery butter in New York derivable from the reports of the Bureau of Labor Statistics averaged 10.1 cents per pound for 1925-29; in Chicago, 8.7 cents. Retail mark-ups on butter tend to be as low as for flour, sugar, and other staple foods. The total spread between prices Wisconsin farmers receive for a hundredweight of milk entering into American type cheese and the Bureau of Labor Statistics national average retail price for this cheese was 18 cents per pound in the 1925-29 period. The most nearly comparable figure for butter would be 15 cents.

The spread that one gets by matching the Department of Agriculture quotations on prices paid by dealers for

¹⁸ At very low butter prices, the cost of processing may be higher than the value of the "overrun." In such instances the price to farmers for butterfat would be lower than butter prices.

milk for fluid use with the Bureau of Labor Statistics quotation on fresh milk is 8.4 cents per quart (14.1-5.7) for the 1925-29 period. But the buying prices include excess milk sold as cream and manufactured products at considerably lower prices. The differences calculated in the third column of the accompanying table of prices at nine selected markets are like the margins obtained from the federal data,

SPREAD BETWEEN PRODUCER AND RETAIL MILK PRICES
Average for Each of Nine Cities, 1925-29^a

City	Producer Price, f. o. b. City. (Per hundred- weight)	Retail Price, Delivered (In cents per quart)	Spread ^b (In cents per quart)
Minneapolis—St. Paul...	\$2.52	11.4 ^c	6.0
Pittsburgh.....	2.58 ^d	14.2	8.7
Chicago.....	2.60	14.0	8.4
Boston.....	2.86	15.0	8.8
Detroit.....	2.88	14.0	7.8
New York.....	3.15	15.4	8.6
Philadelphia.....	3.37	12.6	5.4
Baltimore.....	3.43	13.6	6.2
Connecticut markets.....	3.83	16.0 ^e	7.8

^a Cassels, *A Study of Milk Prices*, Tables 12-20 and 47-58.

^b 1 cwt. = 46.5 quarts of milk. These are not true margins since the dealers sell some of this milk as cream, convert some into butter, etc., the proportions going to each use varying by markets.

^c Minneapolis only.

^d f. o. b. country plants.

^e New Haven only.

the buying prices representing weighted averages according to use—these nine markets all following the practice of paying for milk according to the use to which it is ultimately put. This plan for buying milk is called the “classified use” plan, as distinguished from the method of paying the same price for all milk delivered. The Minneapolis-St. Paul figure is low; but the milk producers’ as-

sociation in this market processes its excess milk in the country, shipping to the city as milk only what is to be used as fluid milk. The other low figures are in markets with small excess receipts of fluid milk and offsetting gains from high margins on cream or special milk.

Margins between prices paid for milk bought solely for fluid milk use and its retail prices are of more significance. The range in these margins in December 1932 in 40 urban markets was from 3.9 to 9.6 cents, the simple average being 5.8. Even these margins, however, must be interpreted along with the margins on cream, the margins on milk and cream sold at wholesale, and the returns from various supplementary and by-product uses of milk and cream. Milk margins tend to increase with the size of the city and other factors adding to real costs of milk distribution; but their major variations among cities must be accounted for historically—they grew that way as a result of the particular operation of competition in each market. If circumstances are such that at some period margins are able to rise in a city, it is very likely that they will shortly be absorbed by increasing costs, of which the entry of new concerns into the business is only one of several possible causes.

Ordinarily retail prices of milk are changed whole cents at a time; and a net profit of a cent per quart yields a very high dividend on the investment in a milk distributing business. Accordingly such businesses are very sensitive to price changes. In markets where producers are effectively organized, and bargain collectively with dealers, retail prices are ordinarily neither raised nor lowered without part at least of the change being passed on to producers, which has the effect of lessening the impact of the price changes upon the dealers. Consequently dealers seldom operate at a loss for several months at a time as formerly;

neither do they occasionally make immense profits for a stretch. However, the business is still a precarious one, which on the one hand makes vigorous defense of margins highly necessary, but on the other tends to reward rather well those who fight successfully.

SANITATION CONTROL

No account of the organization of the milk market would be complete that did not indicate the important functions performed by municipal and state boards of health. City ordinances commonly specify minimum requirements as to bacteria count of ordinary family grade milk. In some markets, the standards for a Grade A milk better than ordinary milk are also specified. The standards also cover butterfat test and percentage of solids, the latter to insure the public full food value in all milk. Other common provisions relate to sediment tests, sanitary conditions on farms and in processing plants, insurance against adulteration, and pasteurization. Except in a few instances state regulations are more restricted in their scope, ordinarily being confined to disease in the dairy herds, and conditions in creameries and other processing plants. Several states, however, have enacted laws designed to standardize the municipal ordinances. These in effect serve as minimum requirements for the state. City ordinances are usually enforced by municipal health authorities who make an examination of bottles of milk occasionally taken from distributors' wagons, and by inspections of herds, barns, and plants and equipment for handling milk. State statutes are enforced by inspectors sent out from appropriate departments such as "Dairy and Food" departments.

The standards vary greatly between markets, and likewise the quality of the enforcement. Health departments

rarely have large enough budgets to carry out fully the terms of the statutes and ordinances under which they operate. Nevertheless, the quality of milk sold in cities has improved greatly within the past two decades, as evidenced generally by reports from city departments of health, of which the following are examples. In Washington, D. C., the typhoid death rate has declined since 1914-16 from 12 to 3 per 100,000 population; deaths of infants under two years from diarrheal diseases, from 45 to 12 per 100,000. Comparable figures for Chicago are as follows: typhoid, from 6 to less than 1; diarrheal diseases, from 123 to 5. For Minneapolis: typhoid, from 9 to less than 1; diarrheal diseases, from 33 to 2. For Cleveland: typhoid, from 7 to less than 1; diarrheal diseases, from 19 to 2 since 1929. For Columbus, since 1910-14: typhoid, from 12 to 1; diarrheal diseases, from 40 to 14. Infant mortality rates have declined about a half in these cities in the last 20 years: in Chicago, for example, from 122 to 48 per 1,000 births; in Minneapolis from 83 to 48; in Columbus, from 111 to 60. But of course other factors have figured in these along with milk supply.

Both distributors' and producers' associations have commonly welcomed the raising of standards. It has made consumers more willing to buy milk, which has benefited both groups. It has helped producers' associations to get their members to produce clean milk, and has kept competing supplies of poor milk out of the market. It has even been charged in some markets that co-operatives and boards of health have conspired in imposing unreasonable standards so as to reduce the milk supply and raise prices. This subject will be discussed further in a later chapter.¹⁹

¹⁹ See pp. 163, 303.

ORGANIZATIONS OF DAIRY INTERESTS

In the actual task of developing a program for dairy products under the Adjustment Act, three organizations of the dairy interests have taken an active part: (1) the National Co-Operative Milk Producers' Federation, representing 53 dairy co-operatives; (2) the International Association of Milk Dealers, representing 443 of the larger milk dealers in the United States; and (3) the National Dairy Council, supported by the industry as a whole, devoted primarily to increasing the consumption of dairy products.

The last annual report of the National Co-Operative Milk Producers' Federation classifies its 53 member co-operatives as follows: 21 fluid milk associations of the bargaining type; 22 fluid milk co-operatives which handle excess fluid milk in plants of their own, or combine manufacturing with fluid milk distribution; 10 solely manufacturing co-operatives. The first of these groups has a membership of 70,000 dairy farmers; the second, of 130,000 farmers; and the third, of 151,000 farmers—in all 351,000 as compared with 2 million or more farmers having four or more cows in 1930. The 22 fluid milk co-operatives in the second group operate about 190 plants. The Dairy-men's League with its 51,000 members belongs in this second group. The manufacturing group operates approximately 700 plants, of which all but 125 cheese factories and 15 condenseries are primarily concerned with butter.

Since its founding in 1916, the National Co-Operative Milk Producers' Federation has sought, and in large measure achieved, the following objectives:

1. Higher customs duties on dairy products.
2. Increased restrictions on the use of oleomargarine and other butter substitutes.

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3. Prohibition of the use of filled milk (evaporated milk with coconut oil substituted for butterfat).

4. Higher customs duties on vegetable oils used in butter substitutes.

5. Philippine independence, as a means of checking customs-free imports of vegetable oils.

6. Exclusion of Canadian milk and cream from United States markets.

7. Protection of co-operatives against anti-trust legislation, income tax levies, etc.

8. Additional public services for the dairy industry and the co-operatives.

9. Further development of co-operative marketing.

As indicated above, this organization took an active part in the framing of the present agricultural legislation. It led the movement which resulted in 22 amendments to the House domestic allotment bill in January 1933. Its activities relating to the administration of the Agricultural Adjustment Act will be outlined in later chapters.

The International Association of Milk Dealers was organized in 1908, the objects being:

(1) To improve the quality of the milk supply, to study the many economic, scientific, and practical problems which may arise from time to time and to exchange ideas which may be of mutual benefit to the members of the association and the public. (2) To indicate and maintain the principles of fair dealing between members, producers, and the buying public. (3) To assist producers and others, that production costs may be lowered and quality improved. (4) To assist members of this organization in all knowledge that will lessen the costs of plant operations and delivery.²⁰

It is now estimated that 45 per cent of the pasteurized milk industry by volume is controlled by members of the association. Soon after the Dairy Section began to function in the spring of 1933, upon the request of the AAA

²⁰ Letter of R. E. Little, secretary, Jan. 24, 1934.

officials this association appointed a Washington representative to advise with the Administration on questions of interest to the distributors of milk.

The National Dairy Council was incorporated on December 10, 1915. Its primary purpose is to increase the consumption of milk and dairy products by means of health education and through advertising. Twenty-seven affiliated local councils were engaged in promotion work in 1934. Funds for local use have been derived mainly by the "check-off" system in markets where co-operative associations furnish a large part of the supply. The national office in Chicago acts in a co-ordinating capacity, launches the movement in new areas, and directs various nation-wide activities looking toward increasing the consumption of all dairy products. It derives its income in part from the local councils and in part from contributors, 175 in number in 1933, who desire to stimulate the consumption of milk and its products. Its activities have been seriously disturbed by the dairy control program.

CHAPTER III

THE DAIRY SITUATION, 1930-33

Between 1929 and May 1933, when the Agricultural Adjustment program was initiated, the dairy industry experienced very great changes. We must seek to understand these changes, since the dairy adjustment program largely grew out of them, and is directed at them so far as its emergency phases are concerned. The most important part of this understanding relates to the extent to which the changes in these years were continuations of movements already under way—of recognized trends and deviations therefrom or of responses to continuing changes in the economic environment; and to the extent to which they were associated with the current general depression. The most striking of these changes were in prices and income; but basic to these were changes in production and consumption.

PRODUCTION CHANGES¹

According to the estimates of the United States Department of Agriculture, the number of cows and heifers two years old and over kept for milk increased from 22,330,000 on January 1, 1929 to 26,062,000, or over 13 per cent, on January 1, 1934.² The percentage increases by years since 1929 were as follows: 2.5, 2.9, 3.7, 3.2, and 3.1 (1933 to 1934).

¹ This subject is discussed further in Chap. XIV.

² These data are subject to considerable uncertainty. As explained in Chap. II, the 1930 census count was probably low, even relative to that of 1920, and especially so for the North Atlantic and other important dairy regions. However, other evidence suggests that more dual-purpose cows and heifers were shifted to the dairy classification than was warranted by the actual shift that occurred in practice, considerable as that may have been.

The number of cows milked in 1933 was the highest on record. Volume of dairy output did not keep pace with cow numbers. Farm production of milk for all uses increased from 98,782 million pounds in 1929 to 102,309 million in 1933, or less than 4 per cent. The percentage increases by years since 1929 were as follows: 1.0, 2.2, 0.1, 0.4 (1932 to 1933). Production per cow, which had reached a peak of 4,582 pounds in 1929, declined steadily to 4,178 pounds in 1933, slightly more than offsetting the increase in cow numbers after 1931.

The major factor in this lag in output was no doubt the effect of the droughts upon dairy pastures. Every year since 1929, dairy pasture conditions have been below normal for the country as a whole. "During no year from 1917 to 1929 were pastures so poor as they were every year of the four-year period 1930 to 1933."³ The indexes for these years were 64.9, 70.2, 71.2, and 65.6, as compared with 81 for the preceding ten years. For the four years, the East North Central states averaged 15 points below their average for the preceding five years; the North Atlantic states, 8 below; and the other sections, from 9 to 12 below. Thus, no section altogether escaped drought conditions during the period.

Also, the low prices of dairy products probably induced less feeding of grain in 1933 even though feed prices were also low. The ratio of butterfat prices to feed prices was highly favorable to heavy feeding in 1931 and 1932, but less so in 1933. (See chart on page 402.) Other factors, perhaps equally important, were the lesser rate of culling of old milkers and of young milkers showing little promise, induced by the very low price of low-grade meat animals and low feed prices; and the shift toward milking more

³ *The Dairy Problem*, AAA, March 1934, p. 3.

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dual-purpose cows. The number of cows and heifers slaughtered under federal inspection decreased from 1929 to 1934. These data do not separate beef from dairy animals, but other evidence indicates that both shared in the decline. Dual-purpose cows do not of course add to production in proportion to their numbers. The statistics also indicate a definite tendency in the last two years, probably temporary, to shift more milk cows from fall to spring freshening dates. This transition would stretch out the lactation period for these cows and reduce their output for several months.

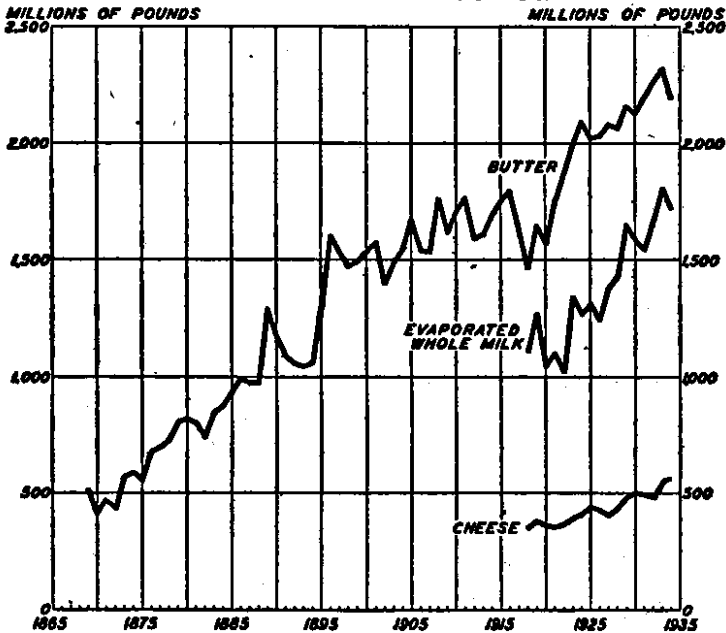
The importance of age-group composition of our dairy herds in interpreting the significance of numbers is well illustrated by the present case. The number of heifers from one to two years old declined after 1931. Thus, fewer calves must have been raised in 1929 and 1930, when prices of dairy products were relatively high. But numbers of calves increased in 1932 and 1933 when milk was much lower in price. (See chart on page 401.) The reduction in young heifers in 1932 and 1933 must have reduced milking herds in 1933 and 1934, but this effect was more than offset by the increasing numbers of cows and heifers two years old and over from 1929 onward. No doubt this increase resulted in part, after 1930, from delayed culling. It was started by the rearing of more heifer calves beginning in 1927. The increase in calves reared in 1932 and 1933 represents potential increase in production from 1934 onward.

This expansion of dairy production from 1930 to 1933 is clearly a continuation of a strong trend. The movement slackened a little in 1926-27, if we may judge from the chart on page 398, and then strengthened after 1928. The slight recession in 1926-27 probably resulted from more culling, and from rearing fewer heifer calves in the years just before.

Later analysis suggests that these latter changes principally affected the dual-purpose types of milk cows and heifers.

These influences are clearly apparent in the changes in output of butter, cheese, and evaporated milk shown in the accompanying chart. Between 1919 and 1929, the volume

DOMESTIC OUTPUT OF BUTTER (1869-1934) AND OF CHEESE AND EVAPORATED WHOLE MILK (1918-34) *



* Adapted from *Negatives 26353, 22171-B, and 22170*, Bureau of Agricultural Economics, U. S. Department of Agriculture.

of milk converted into these products increased two-fifths. The butter output increased one-third, cheese one-third, and evaporated milk one-half. Apparently a larger proportion of the total milk supply went into factory products after 1930 than before, since total factory production had increased 8 per cent by 1933, while total milk production

had increased less than 4 per cent. This is consistent with the disparities between fluid milk prices and other dairy product prices pointed out below. By individual products, butter production increased 9.3 per cent, cheese production 8.3 per cent, and evaporated whole milk 18.5 per cent. The foregoing percentage increases in dairy product production, reduced to rates per year, compared as follows with the rates in the preceding decade: ⁴

	1921-30	1930-33
Butter, creamery and farm.....	2.4	3.1
All cheeses	1.9	2.8
Evaporated whole milk	4.5	6.2

A large increase in creamery butter production in the last decade was about one-third offset by a decrease in production of farm-made butter. Since 1930, farm-made butter has been increasing again, but not enough to raise perceptibly the 3.1 per cent average given above.

The foregoing effects should vary by sections. Such data as are available indicate that between 1929 and 1933 the increase in milk production was 3.2 per cent in the North Atlantic states, and 4.9 per cent in the North Central states. The parallel figures for number of milk cows were 10 and 14 per cent respectively.⁵ An abundance of feed at prices still lower than butter and cheese prices seems especially to have stimulated dairying in the Mid-West. In the South, production increased 2.6 per cent and the number of cows 9.4 per cent.

PRICES

To understand the dairy situation as it actually developed, we need to examine the price changes in more detail, noting

⁴ The year 1921 is taken in place of 1920 because conditions in the dairy industry were more nearly normal then.

⁵ These data, especially those for the North Atlantic states, may be distorted somewhat by the low count of cattle in the 1930 census.

differences between the movements for different products and different regions. Also these changes need to be observed against a background of price relationships in 1929 before the onset of the depression.

The data assembled on prices received by farmers for dairy products sold are far from satisfactory because wide differences in terms and bases of sale confuse the quotations beyond the power of human agencies to disentangle them. Thus, those in the map on page 66 showing the variations by states in 1929 in prices received by farmers for milk sold as butterfat undoubtedly include prices for some cream for fluid consumption sold on a butterfat basis. These prices principally reflect distance from market, the surplus or deficiency status of the area, and the quality of product and efficiency in its manufacture. Dairymen in territory which imports butter receive the current wholesale market prices plus transportation charges. This description fits most of the North Atlantic states. In surplus areas, the price is less transportation charges. On the other hand, regions with a dense cow population produce good butter at low factory cost per pound, which description fits most of Wisconsin and Minnesota. The low-grade farm-made butter of the Southern states sells at bottom prices.

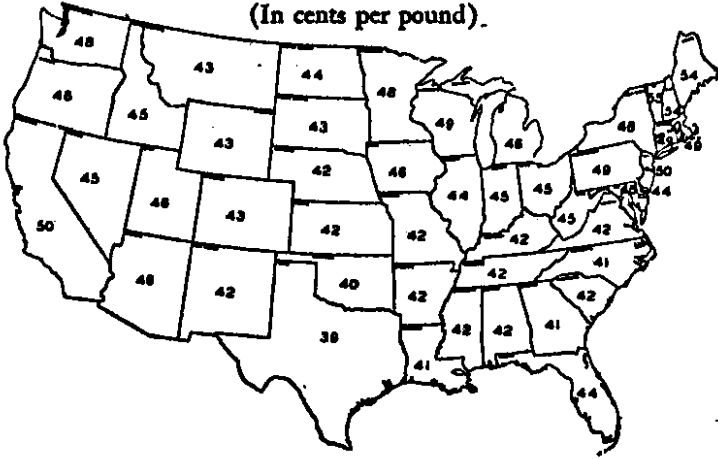
The data in the map of prices received for fluid milk or cream sold at wholesale confuse prices received for milk consumed whole with milk entering into cheese and concentrated milk, and with milk converted into cream for fluid use and use in ice cream.

The extreme range for 1929 butterfat prices was from 39 cents per pound in Texas to 55 cents in Vermont—36 per cent of the average of 45.2 cents. The extreme range in wholesale milk prices was from \$1.90 per hundred-weight in Utah to \$3.90 in South Carolina—78 per cent

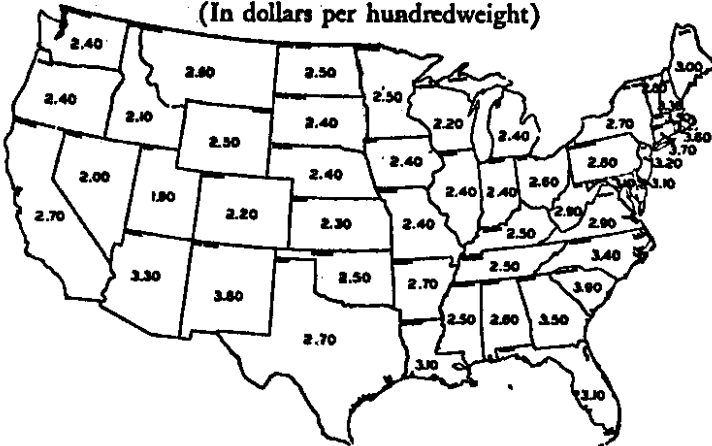
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PRICES RECEIVED BY PRODUCERS FOR SPECIFIED DAIRY PRODUCTS, 1929^a

I. Prices of Butterfat
(In cents per pound).

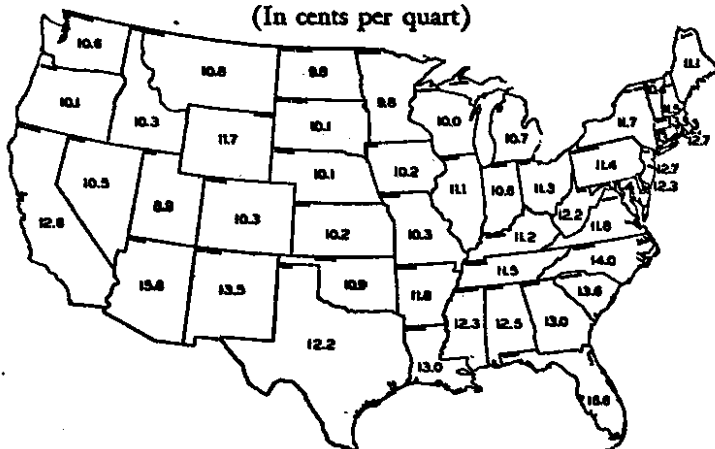


II. Wholesale Prices for Fluid Milk and Cream
(In dollars per hundredweight)



^a John Shepard and Richard K. Smith, *Milk Production Trends, Statistical Supplements 9*, May 1933, Table 26. Division of Crop and Livestock Estimates, U. S. Department of Agriculture (mimeographed).

III. Retail Prices to Producers for Fluid Milk (In cents per quart)



of the average of \$2.57. Butter can be transported into a deficiency or high-cost area at little cost as compared with fresh milk. The price of \$2.20 in Wisconsin—lower than in all neighboring states—reflects cheese and concentrated milk use more than whole milk use. Farmers delivering whole milk to cheese factories in Wisconsin received \$1.87 per hundredweight in 1929; those delivering to condenseries, \$2.12.⁸ Butterfat producers in Wisconsin were receiving \$1.80 per hundredweight in 1929 (49 cents x 3.67 pounds butterfat). Fluid milk producers around Milwaukee received \$2.63 per hundredweight in 1929. The difference represents partly the cost of transporting fresh milk to city markets, partly the value of the skim milk, and partly a compensation for the extra care required in meeting municipal milk standards.

Butterfat producers in South Carolina were receiving \$1.71 per hundredweight in 1929 (42 cents x 4.07 pounds

⁸W. P. Mortensen and others, "Wisconsin Farm Prices," *Wisconsin Agricultural Experiment Station Research Bulletin 119*.

butterfat) as compared with \$3.90 received by fluid milk producers, the difference being \$2.19. In the Southern states the fluid milk and butter producers are "non-competing groups" in large measure, territorially and even socially. Most of the milk made into butter on farms could not possibly be brought into the fluid milk market.

The map on page 67 presents the variation by states in the average prices received per quart in 1929 by producers for milk sold by them at retail. The range was from 8.9 cents in Utah to 16.6 in Florida. The average, 11.4 cents per quart, equalled \$5.30 per hundredweight (46.5 quarts). If we assume that these producers could have sold their milk at the average wholesale price of \$2.57 per hundredweight, they obtained a margin of \$2.73 per hundredweight, or 5.9 cents a quart, for processing, bottling, and delivery expenses.

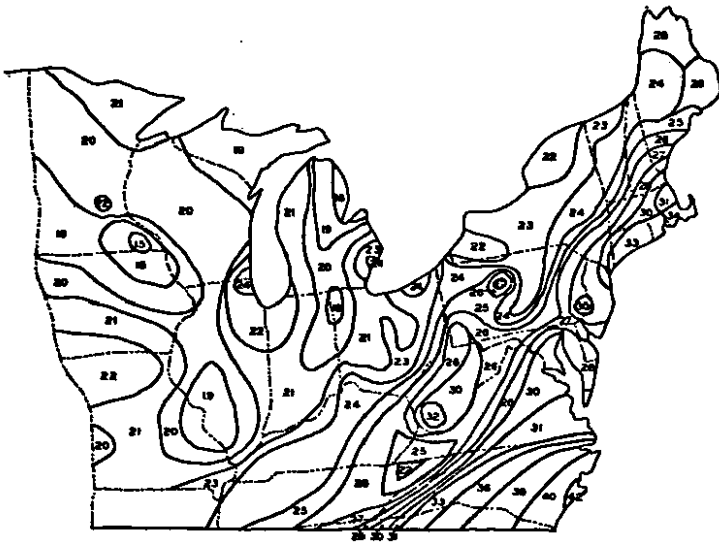
In the map on page 69, the prices received by dairy farmers in 1929 for all milk sold as fluid milk are indicated in more detail on the basis of county averages, for the Northeastern industrial section of the United States. This map shows clearly how prices decline with distance from city markets. It will be noted that the highest prices to producers in the nine cities listed on page 53 are in the larger cities, since these must include the transportation cost of the longest hauls, and in the cities obtaining milk from areas having little or no excess of milk for conversion into butter or cheese.

The final map, on page 70, presents by states the weighted average prices received for dairy products disposed of in all forms in 1929, the weights being based on the assumption that the family consumption of each type of product is valued as if it were sold.⁷ These averages

⁷ This is not an altogether valid imputation of value, since on many of the one- and two-cow farms these products would not have been produced for sale

reflect the varying proportions of the milk sold at high whole-milk prices (both retail and wholesale), at lower butterfat prices, at still lower farm butter prices, etc., in the different states, as well as all the other factors above

WHOLESALE FLUID MILK PRICES IN THE NORTHEASTERN
INDUSTRIAL REGION, 1929^a
(In cents per gallon)



^a From John M. Cassels, *A Study of Milk Prices*, to be published shortly by Harvard University Press.

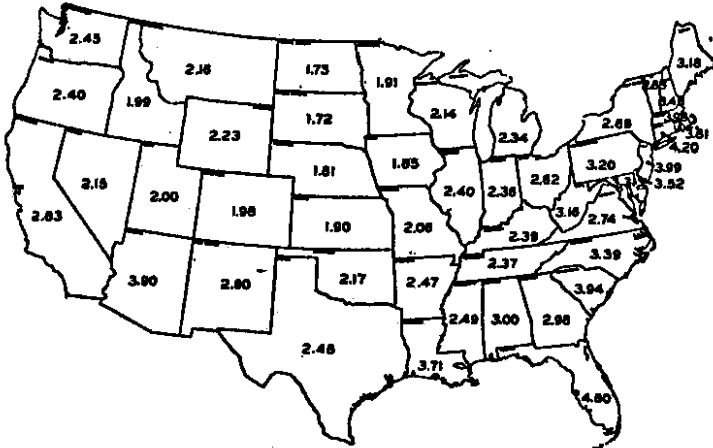
mentioned. The range is from \$1.72 in South Dakota to \$4.20 in Connecticut and \$4.80 in Florida—128 per cent of the average of \$2.41 per hundredweight. The \$2.41 per hundredweight equals 62 cents per pound of butterfat (3.93 per cent butterfat) or 5.2 cents per quart.

When prices of dairy products are considered in relation

had there been no family use for them; but the error introduced is probably no greater than that already in the data for other reasons.

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AVERAGE PRICES RECEIVED BY PRODUCERS FOR ALL DAIRY PRODUCTS, 1929^a



^a Shepard and Smith, *Milk Production Trends, Statistical Supplement 8, Table 26.*

to other prices, dairy farmers appear to have fared better than other farmers in the period between the World War and the Great Depression. In fact, had dairy farmers been dairy farmers exclusively in that period, so far as prices of their products were concerned, they would not have realized that agriculture was not flourishing from 1921 to 1929. The average indexes (1910-14 = 100) of the different groups of farm products for the 1924-29 period were:⁸

Grains	137	Meat animals	141
Cotton and cottonseed.....	156	Miscellaneous	147
Fruits	149	Truck crops	146
Dairy products.....	154	All groups.....	146
Chickens and eggs.....	155		

In terms of parity, as defined in the Adjustment Act, prices of dairy products averaged slightly above this level

⁸ Appendix B gives the indexes by years for 1910-32 and by months since.

from 1921 to 1929, as contrasted with eleven points under parity for all farm products. Dairy product prices were below parity only in 1922, 1924, 1925, and 1926.⁹

Data in Appendix B show that the break in prices in 1930 and following was less severe for dairy products than for most other farm products. Prices of dairy products held their ground much more firmly in 1930 and 1931 than those of most other farm products; and this difference maintained in part in 1932 and 1933. As late as March 1933, the index for dairy products stood at 71 as compared with 55 for all farm products, the sharp break coming in April. Prices of meat and animals and even those of poultry fell away much more sharply after 1929 than those for dairy products. Between 1930 and April 1933, only grains, fruits, and vegetables fell fewer points in the index scale than did dairy products. Grains fell 73 points as compared with 85 for dairy products; but they started from 37 points further down the scale. Cotton and cottonseed declined 95 points, meat animals 99 points, and poultry products 104 points.

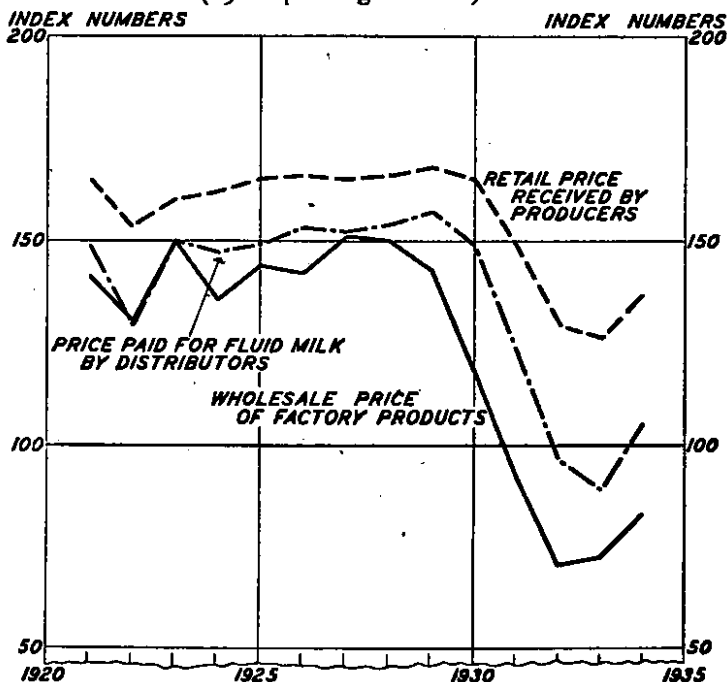
The foregoing statement in terms of all dairy products combined considerably misrepresents the situation for different products and prices for regions—particularly the Mid-West dairy region as contrasted with the Northwest. The chart on page 72 traces the movements since 1921 in terms of indexes on the 1910-14 basis (a) of wholesale prices of manufactured dairy products; (b) of the prices

⁹ Parity price is computed by the Department of Agriculture by the simple process of multiplying the price of the product in 1910-14 by the current index of the prices which farmers pay for goods which they buy. The result is the price of dairy products needed to enable the producers thereof to buy the same quantity of goods that these dairy products could have been exchanged for in 1910-14. The methods of computing parity prices for the different dairy products are explained in Appendix C.

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paid for milk for fluid use by distributors; (c) of the retail prices received by farmers distributing their own milk.¹⁰

COMPARISON OF DIFFERENT DAIRY PRODUCT PRICES, 1921-34^a
(1910-14 average = 100)



^a "Summary of Dairy Situation Statistics," supplement to *The Dairy Situation*, U. S. Department of Agriculture, April 1934, Tables 106, 112, 127.

It will be apparent that the butter and cheese dairymen suffered much greater declines than the fluid milk dairymen. By classes of dairy products, milk sold as butterfat dropped 60 per cent from 1929 to 1932; farm-made butter, 52 per cent; milk bought by distributors, 39 per cent; and milk retailed by distributors or by farmers, each 24 per cent.

¹⁰ "Summary of Dairy Situation Statistics," April 1934, pp. 73, 63, 59 respectively.

Dairying competes most closely with beef production in the Mid-West, with hog production in the more eastern of the Mid-West states, and with poultry production and fruits and vegetables in the North Atlantic states. Beef prices were the lowest of all livestock prices until 1927, while pork prices were the lowest of all livestock prices from 1927 on. Dairying was as remunerative as its competing industries in the North Atlantic states in this period.

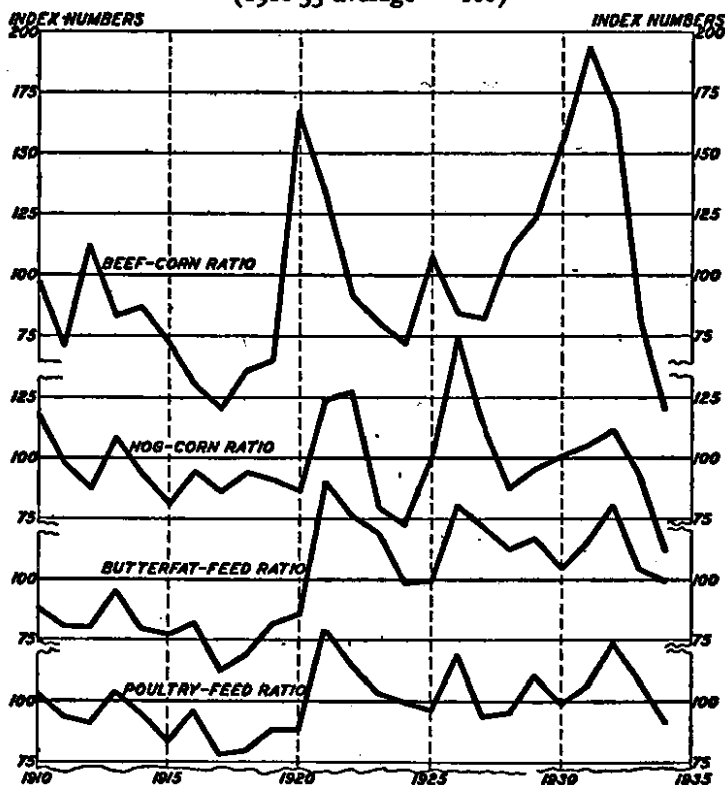
The chart on page 74 indicates that the ratios of prices for all forms of livestock and livestock products to feed prices were very favorable to expansion of output during 1921-29, dairying having only a slight advantage over hogs and beef cattle. Data given in Chapter II indicate that dairying expanded in this period, as one would expect, but not as much as the demand for dairy products until about 1928, with rising prices as a result. As a concomitant, the new tariff duties levied first in 1921 became increasingly effective on prices. Numbers of dairy cattle, it has been pointed out, did not increase as rapidly as production, and even declined a little in 1926-28; and beef cattle numbers fell off continuously until 1928. The low prices accompanied heavy slaughterings until 1927. The trend of hog production was downward from 1924 onward.

In general, therefore, the dairy industry did not expand in this period as rapidly as prices seemed to warrant. Probably the explanation for this is found on the cost side of the equation. Mechanization was contributing much more to crop than to livestock production; and wage levels remained high following the World War. Hence, dairy production, being relatively labor intensive, was at a disadvantage. In so far as dairying is dependent upon hired labor, it therefore was not so favored in this period as relative prices of products would indicate.

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In 1931 and 1932, the feed-price ratio was favorable to dairy farming, and no doubt this circumstance contributed greatly to the unusual increase in number of cattle reported

RATIOS OF PRICES OF LIVESTOCK AND LIVESTOCK PRODUCTS TO FEED PRICES, 1910-34^a
(1910-33 average = 100)



^a Derived from data in *Crops and Markets*, December 1934 and February 1935, supplemented by data supplied by the U. S. Department of Agriculture.

Beef-corn ratio = bushels of corn required to buy 100 pounds of beef

Hog-corn ratio = bushels of corn required to buy 100 pounds of pork

Butterfat-feed ratio = pounds of grain required to buy one pound of butterfat

Poultry-feed ratio = pounds of poultry ration required to buy one dozen eggs

as milk cows and heifers after 1931. Milk production would have increased as much, if not more, except for the dry summer pastures of these years.

DAIRY INCOME

The effects of the foregoing changes upon incomes of dairy farmers is what finally must be observed. With increasing volume and relatively high prices, income from dairy production has been an increasing fraction of agricultural income ever since the World War. In the first year for which such percentages have been computed, 1924, the estimate was 14.8 per cent; by 1929, it had reached 19.5 per cent. With prices of other farm products nearly at bottom in 1932, and those of dairy products still holding relatively firm, this percentage rose to 24.5.

It is clear that although the dairy farmers of the country clearly felt the need of better conditions in 1931, 1932, and 1933, their needs were not so great as those of other important groups, notably the grain and the cotton farmers from the beginning of the depression, and the meat producers in 1932 and afterwards. Still more important, dairy-men were in better condition to stand a depression than most of the other groups, since they had fared better in the years from 1921 on.

Evidence in support of the foregoing is found in the data on farm real estate values and forced sales of farms in the dairy states as compared with other states both in the years before 1930 and afterwards. In March 1933 the index of farm real estate values stood at 105 in the New England states (1912-14=100), as compared with 73 for the United States.¹¹ The index for the Middle Atlantic states stood

¹¹ The data in these paragraphs are from B. R. Stauber, *The Farm Real Estate Situation, 1932-33*, U. S. Department of Agriculture.

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at 82. For the two most nearly specialized dairy states of the North Central group, Wisconsin and Minnesota, the indexes were 80 and 79 respectively, compared with 53 for Indiana and 55 for South Dakota. The declines between 1929 and 1933 were only a little more than half as much in the North Atlantic states as in the rest of the country. In the dairy states of the North Central region, farm real estate values fell less rapidly from 1920 to 1929 than in the corn-hog states, and somewhat more rapidly when butter prices sagged from 1930 on. These differences are well revealed in the following comparison of the Wisconsin, Indiana, and Iowa indexes:

	1920	1925	1929	1930	1931	1932	1933
Wisconsin	171	130	119	117	104	91	80
Indiana	161	102	83	80	72	60	53
Iowa	213	136	116	113	98	80	58

In Iowa the decline was rapid both before and after 1929.

The forced sale rate was 7.3 per 1,000 farms in the New England states in 1930 and 9.6 in the Middle Atlantic states, as compared with 17.5 and 23.3 in the East and West North Central states respectively. In 1933, the comparable figures were 13.2 and 19.6 as against 38.3 and 61.5 respectively. The record for states in the South and West approximates that for the North Central states. From 1930 on, Wisconsin and Minnesota had as many forced sales as the other states in their territory.

The changes in relative prices of the different dairy products after 1930 greatly affected the relative income position of the different regions. The table following gives the rankings of the eight leading dairy states in income from dairy products in 1929 and the three years following:

Rank	1929	1930	1931	1932
1.....	Wisconsin	Wisconsin	New York	New York
2.....	New York	New York	Wisconsin	Wisconsin
3.....	Minnesota	Pennsylvania	Pennsylvania	Pennsylvania
4.....	Pennsylvania	Minnesota	Minnesota	California
5.....	California	California	California	Minnesota
6.....	Iowa	Illinois	Illinois	Illinois
7.....	Illinois	Iowa	Ohio	Ohio
8.....	Ohio	Ohio	Iowa	Iowa

The more largely dependent the state upon butter and cheese for an outlet, the more loss in ranking. Wisconsin's income declined 57 per cent; New York's, 47 per cent. In Connecticut, not shown in the table, the decline was only 26 per cent; in Vermont, 40 per cent; in North Carolina, 32 per cent. The differences between regions are well conveyed by the following data on farm price changes per 100 pounds of milk or milk equivalent sold (in dollars):

Region	1929	1930	1931	1932
North Atlantic.....	3.15	2.91	2.27	1.79
East North Central.....	2.30	1.91	1.44	1.12
West North Central.....	1.88	1.51	1.14	.86
South Atlantic.....	3.25	3.10	2.61	2.20
South Central.....	2.46	2.17	1.67	1.24
West.....	2.49	2.18	1.77	1.44
United States.....	2.41	2.07	1.61	1.26

No doubt the differences in terms of net income and net prices would be less striking than in terms of gross income, since many of the costs in the fluid milk sections are relatively inflexible. However, the data presented above on land values and forced sales indicate that the differences were still very great.

CONSUMPTION CHANGES

The depression no doubt also contributed greatly to the decline in dairy product prices on the demand side. Consumption of butter increased at first after 1930; but this

must not be misunderstood. As explained on page 37, with no present export outlet for butter except at extremely low prices, and with extended carry-over out of the question, consumption is almost certain to keep up with production. Prices will sink low enough to induce this result, since any price above the export level is better than holding the butter very long. The falling off of employment undoubtedly greatly reduced the demand for butter; and in consequence prices had to fall much further than otherwise to induce complete consumption. But even then the decline was not so great as for most farm products because, as explained earlier, the demand for butter is relatively elastic.

Cheese consumption fell off with the onset of the depression because most of our population does not consume cheese as a staple food, nor consider it a cheap source of nourishment when incomes are reduced.

The consumption of fluid milk and cream did decline significantly in most urban markets, in spite of much lower prices in 1932 and 1933. A strong upward trend in such consumption was sharply reversed in 1930 when retail fluid milk prices held firmly in 1929 and 1930. The per capita average for the United States declined only from 40.8 to 38.8 gallons, but these figures include farm and village as well as urban consumption.

The only available data on fluid milk consumption by cities are obtainable from records of public health departments; but these are not assembled on a comparable basis for different cities and do not always represent the same population group or reporting distributors each year. If we are correct in assuming that the errors will compensate to some extent in the averages, the following data are worth

noting. An average of the reports of a sample of cities widely distributed over the country indicates nearly a 12 per cent decline during 1930-33, by years as follows, in order: 3.1, 3.9, 2.0, 2.7. The average of all reports received by the United States Department of Agriculture indicates a 7 per cent decline. This may be a better figure than the 12 per cent. By individual cities whose reports seem reasonably consistent, the declines range from as much as 25 per cent or more for a few industrial cities with large industrial populations suffering great unemployment (like Detroit and Pontiac, Michigan, and New Haven and Waterbury, Connecticut) to no declines whatever or even increases in some well-to-do residential cities. For most of the large cities of the country the declines ranged from 5 to 10 per cent.¹² The reports carry the definite suggestion that reduced retail prices increased consumption in many cities, especially in 1932.

The changes in oleomargarine production and consumption since 1929 until recently have been in the nature of severe declines below the general upward trend indicated on page 38. Oleomargarine production declined 37 per cent between 1930 and 1932, accompanying the decline in butter prices. However, it recovered one-third of the loss in 1933, probably as a result of the continuing unemployment and lower oleomargarine prices; and with the rising butter prices of the winter months, it increased greatly, running twice that of the year before. At present income

¹² R. W. Bartlett, using such data as are available, calculated the following percentage declines for either 1929-32 or 1930-32: New York, 4; Philadelphia, 10; Boston, 1; Peoria, 6. (*Illinois Agricultural Experiment Station Bulletin 397*.) J. M. Tinley obtained declines of 7 and 5 per cent for two urban counties in California in the same period. (*California Agricultural Experiment Station Bulletin 534*.) The figures reported by the Los Angeles Health Department show a much larger decline in that city.

levels, apparently a retail butter price of 30 cents or over stimulates oleomargarine consumption.¹³

The demand for milk, like that for butter, declines with loss of income, but not so much.¹⁴ Consumers may be told that milk is essential to the health of their children, and that it is a better buy for the money at 10 to 12 cents per quart than several other staple foods; but when money gets scarce the milk bill begins to look too large to them and they start trimming it. With demand thus shrinking, unless prices fall in proportion, purchases will decline.

Much discussion of the elasticity of consumption of dairy products fails to distinguish between economic classes. The well-to-do classes buy about the same amounts of butter, milk, and cream at high prices as at low, in bad times as in good times. The same statement is almost true for the middle-income groups. But the lowest third of the population greatly reduces its purchasing of all three, and especially of cream, if prices of these fail to drop with those of other foods, or with their incomes. If this group buys a fourth less milk, total consumption is reduced one-twelfth.

Retail fresh milk prices have failed by a wide margin to keep pace with the general decline in retail food prices or even with retail prices for dairy products in general. In 1932, of the staple foods in the Bureau of Labor Statistics retail list, only round steak showed a smaller decline than fluid milk; in 1933, only bread. A lag in the decline in

¹³ In keeping with the phenomenally low butter prices in England since 1929, averaging about 8 to 10 cents per pound less than United States prices, butter consumption has increased from 18 to 23 pounds per capita, and oleomargarine consumption has declined from 14 to 9 pounds per capita.

¹⁴ W. C. Waite and R. W. Cox found that Minneapolis families with per capita incomes over \$900 in 1934 consumed 26 per cent more milk, 45 per cent more butter, and 170 per cent more cream than those with per capita incomes below \$300. *Minnesota Agricultural Experiment Station Bulletin* 311.

milk prices of the same order occurred in 1920-21, but it was not so pronounced, nor so prolonged. No doubt the increase in the lag is due to the more complete organization, especially on the production side, of the fluid milk industry now than then.

Butter is the final recipient of all the foregoing effects. If prices of milk and cream fail to decline with falling incomes, less of these are consumed, and more milk becomes converted into butter. The larger stocks of butter produced find consumers at some price. Fortunately, retail prices of butter respond readily to the larger supplies, and this helps to relieve the situation. Thus does the failure of retail prices of other dairy products to adjust to changing conditions lower the general level of farm prices of butterfat, and hence of all dairy products. Thus do the earnings of those engaged in marketing milk and cream tend to be maintained while prices to milk producers fall.

DISTRIBUTION CHANGES

The effects of the foregoing changes upon the distribution of milk can be briefly summarized. The disparities during 1930-33 between prices of milk sold to creameries, cheese factories, and condenseries, on the one hand, and milk sold to distributors, on the other, furnished a strong incentive for more dairymen to ship fluid milk. If cooperative or established dealers refused to accept the milk, producers sought independent outlets, or became producer-distributors. The number of small distributors increased notably in many markets. In order to develop trade, the new distributors undersold the established agencies, and some employed methods clearly undesirable socially. More of the irregular types of distributing agencies appeared—peddlers, cut-rate stores, milk depots, roadside stands, etc.

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Suffering loss of volume of sales, the regular dealers demanded lower buying prices, which were usually granted by the co-operatives. But the price reductions were commonly not enough to meet the new forms of competition. A contributing factor was the rigidity of wages of milk-wagon drivers and plant employees, which held up the dealers' margins and furnished an opportunity for producers and unemployed drivers to make fair wages operating as one-man distributors. Evidence from the recently announced studies of the Federal Trade Commission, as well as studies made in several markets by other federal or state agencies, also indicates that the larger dealers undertook to maintain margins upon the same level as in 1925 to 1929, and almost succeeded through 1931 and 1932. Nevertheless, retail and producer prices kept on subsiding, but butter and cheese prices fell faster until late in 1932 or early in 1933, at which time milk prices broke almost completely in many markets. The organized producers for a short time in a few markets actually received net prices lower than butterfat prices plus the value of the skim milk. This was the immediate setting for the milk marketing agreements drafted in the spring and summer of 1933.

CHAPTER IV

FLUID MILK MARKETING AGREEMENTS¹

This chapter and the one following will give in general outline the activities of the AAA relative to fluid milk and the changes in the dairy industry associated or concurrent therewith. Several chapters following these will analyze the major problems that have arisen in connection with these activities. A chapter will then be devoted to the parallel efforts of the state milk control boards or commissions in regulating milk marketing. Only three chapters deal specifically with the activities relating to butter, cheese, and the other manufactured dairy products and the problems arising therefrom. No doubt some will criticise this distribution of attention among the different dairy products; but it is wholly consistent with the purpose of this volume to review, analyze, and evaluate the AAA program. To discuss adjustment procedures for butter and cheese more extensively than has been done in this volume would require introducing subjects and material still outside the scope of the AAA.

The discussion of fluid milk control will be assisted somewhat if the reader knows in advance that marketing agreements for evaporated and dry skim milk were developed in the summer of 1933, and are still in effect; that the butter, cheese, and ice-cream agreements were never completed; that the proposal to control total production of dairy products through a system of benefit payments and individual contracts was abandoned after a series of 15 public meetings

¹ Further details of the activities of the AAA relative to fluid milk control will be found in F. F. Lininger, *Dairy Products under the Agricultural Adjustment Act*, 1934.

held at various points in April 1934; and that the only other control efforts undertaken have consisted of the purchase of dairy products for relief distribution beginning in August 1933, and the purchase of some diseased milk cows, as well as 2 million or more dairy or dual-purpose cattle, as part of the drought-relief program in the summer of 1934 and since.

THE DAIRY INDUSTRY'S RECEPTION OF THE ADJUSTMENT ACT

For reasons explained in Chapter III, the dairy farmers had not taken as active an interest in the proposed reform legislation of the last decade as had the cotton, wheat, and corn and hog producers. They had used the credit and other facilities of the Federal Farm Board much less than most other large groups. The inclusion of dairy products in the list of basic commodities was a strategic or safeguarding move on the part of the organized dairy interests, and had little real following among the rank and file of the dairy farmers. Some of the fluid milk producers had had experience with a system of individual quotas and classified price that had something in common with the allotment feature of the Adjustment Act; and in December 1932 the National Co-Operative Milk Producers' Federation had gone on record as favoring a limited use of the allotment principle. But the producers delivering their milk to creameries, cheese factories, and condenseries, and for that matter the majority of those selling fluid milk, had had no experience with any quota system and had never given much support to the "radical" price-raising reform schemes of the 1921-29 period. There had been no sustained movement among this latter group, as there had been among the cotton, wheat, and corn and hog growers,

to secure price-raising legislation by "making the tariff effective" and the like.

It was equally true that among actual fluid milk producers there had been no long period of discussion centering around the need for marketing agreements and licenses. Until 1930 the milk producer associations had been pretty well satisfied with the progress they were making under the Capper-Volstead Co-Operative Marketing Act. The proposal to support collective bargaining with marketing agreements and licenses broke suddenly in the winter of 1933, and though actively discussed by the more prominent of the milk producer associations in the next few months, it was little understood even among the membership of the fluid milk co-operatives—to say nothing of the large group of fluid milk producers not belonging to co-operatives—when the Adjustment Act was signed on May 12.

In March and April, however, prices of dairy products were at last slipping rapidly toward the extremely low levels of prices of other major farm products, and fluid milk prices were breaking with them in many markets. The milk producer associations were finding increasing difficulty in meeting the competition of new or irregular sources of supply. Producer strikes were being talked about in several markets. When the proposed Adjustment Act was given to the public on March 16, and its possibilities were brought to the attention of the association managers, some of them at once turned to it as offering a means of escape from their difficulties. None of the states had passed milk control acts as yet, and thus no public agency of any kind was available to which they might turn.² Now the

² Wisconsin's 1932 law had not been sufficient. New York and several other states passed milk control acts during April-July. See Chap. XI.

federal government in its great nation-wide recovery program had provided such an agency.

The Pure Milk Association of Chicago was one of those having serious difficulties at the time. Prices at retail had fallen to 8 cents and below, but still the peddlers, roadside stands, and milk depots kept on expanding their sales. Distributors would not agree upon a retail price increase because it would stimulate still more irregular retailing, and they maintained that margins could not be further reduced. There had been a short-lived strike in one section of the milkshed which the majority of members had opposed. Prices were presently raised, but cut-price selling increased. The demand was now for a \$1.75 or better Class I price that held. The Adjustment Act seemed to offer a solution. The larger dealers said they were willing to pay this price if the AAA would enforce it on all agencies selling milk in the Chicago market, and if the retail price was raised and likewise imposed uniformly on all their competitors. Accordingly the producer and the dealer groups put their heads together and worked out a marketing agreement which they presented to Secretary Wallace in person on May 12, the day the act was signed. Other milk markets in the meantime had followed Chicago's lead, and scores of agreements were soon in process of formulation. By the middle of September over a hundred had been drawn.

PREPARATIONS IN THE AAA³

If the dairy farmers of the country were not ready to use the Adjustment Act to best advantage, certainly those chosen to apply its provisions to dairy products were not. Fully expecting that AAA action would need to be under-

³ See Edwin G. Nourse, *Marketing Agreements under the AAA*, Chap. II, for a more detailed account of this subject.

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taken relative to dairy products, Secretary Wallace put a committee in the Department of Agriculture at work upon them early, and included a Dairy Products Section in the administrative set-up of the AAA. However, since the needs of the dairy farmers were not as urgent as those of some other groups, and since production control would prove much more difficult for dairy products than for wheat and cotton, he hoped that his staff could be given a little time to work out its problems for the latter products before having to tackle dairy products.

Later events indicate that Secretary Wallace did not visualize the fluid milk producers as a group sufficiently separate from other dairy farmers to have a program of their own. Neither did he consider that the milk producer associations or the co-operatives generally were given preferred position under the act. As "associations of producers," in the language of the act, they were one of the three possible parties to marketing agreements, for whatever benefits to producers might be accomplished under such agreements. They might well serve very effectively as agencies transmitting these benefits back to producers, and as useful collaborators with the AAA in carrying out the purposes of the act. He did not consider that the act instructed the Administration either to promote co-operative marketing or to provide special services to co-operatives. This latter function, in the plans being worked out by the President, was to be retained by the Federal Farm Board then in process of being taken over by the Farm Credit Administration.

Apparently most of the thinking within the group of prospective administrators of the AAA that the Secretary assembled between March 16 and May 12, while the act was on its way through Congress, was in terms of wheat,

cotton, and tobacco. The staff was poorly equipped at the outset to deal with the dairy phases of the program. No one had formulated any clear ideas as to the application of production control to dairy products. The Department Committee on Dairy Products reported on April 29 that such control offered too many difficulties to be practical. Ideas as to the application to dairy products of the marketing agreement and license section of the act were apparently even less clearly formulated at this stage. Mr. George Peck, first Administrator of the AAA, was still thinking of marketing agreements in McNary-Haugen terms in considerable measure. Secretary Wallace and Mr. Chester Davis, in charge of production adjustments, thought of them largely as supplementing the production control arrangements. The committee thought of them mainly as marketing reform devices.⁴ The attitudes of the Legal Section set up under the direction of General Counsel Jerome Frank, and of the Consumers' Counsel set up under the direction of Dr. Fred C. Howe, had the complexion of marketing reform rather more than of mere price raising; or perhaps a better statement is that these groups insisted upon considering the effects of any

⁴ "Through the marketing agreement provision of the bill, the Secretary has the power to enter into marketing agreements with processors, associations of producers and others handling dairy products. This provision would enable the Secretary to utilize, with such modification as would appear necessary, existing market set-ups which have been developed along this line. It would permit such price agreements between producers and processors, subject to the Secretary's approval, and price or other agreements between associations of producers, and between processors, as would meet the Secretary's approval. . . .

"The purpose of applying the licensing provisions would be to eliminate unfair practices or charges, as a result of which some economies in procurement costs, manufacturing costs and distribution costs of manufactured dairy products, and processing and distribution costs of fluid milk and cream might be effected, with benefits passed back to producers in the form of higher net prices. . . ."

From *Report of Committee on Dairy Products* (manuscript), Apr. 29, 1933.

proposal as a feature of a continuing marketing set-up. All marketing agreements were carefully analyzed by these two divisions on their way to the Secretary for final approval. Also, certain major features of the organization first set up to administer the act contributed to delay in learning how to apply it effectively to dairy products. Although the major procedure specified in the act for realizing its objectives was production control, Mr. Peek was mainly interested in the marketing agreement procedure. Once actual program planning began, he was found objecting to the plans proposed involving use of production allotments even for wheat and cotton. He believed that prices to producers could be raised as needed merely by having the processors and distributors enter into agreements among themselves, or into AAA marketing agreements, to pay remunerative prices to producers. If in some cases the whole supply could not be disposed of at these prices through the regular channels of distribution and use, he favored making special arrangements for disposing of the remaining surplus by export dumping (*à la* McNary-Haugen) or in lower order uses on the domestic market. If these measures failed to clear the market and support the price at parity levels, he would as a last resort make use of the production adjustment provisions of the act to reduce the surplus or check future production. He doubted the need for this latter except in extreme cases.

The administrative set-up chosen for the AAA—with a chief of production adjustments and another of processing and marketing adjustments for each commodity, occupying separate suites of offices and operating largely independently of each other and responsible at the top to separate chiefs, Mr. Chester Davis for production, and General W. I. Westervelt for processing and marketing—very

obviously tended to give equal importance to these two aspects of the AAA program, and also to promote a divergence of opinion within the organization. It was indeed more nearly Mr. Peek's than Secretary Wallace's plan of organization; but Secretary Wallace was not disposed to make an issue of it at the time. Moreover, it was never carried out completely—dairy products, tobacco, and rice never having had more than one commodity chief; and when Mr. Peek resigned in December 1933, General Westervelt and many of his aides followed suit.

The prompt appearance of the group from the Chicago market forced the Administration to move more quickly than it had hoped for. Dr. Edwin A. Gaumnitz, economist for the Dairy Section of the Bureau of Agricultural Economics, was hastily called into service; and Dr. Clyde L. King was called down from the University of Pennsylvania to act first as consultant and later as chief of the Dairy Section. Dr. King had been closely associated with many important collective bargaining milk markets—Philadelphia, Pittsburgh, Baltimore, Washington, Chicago, Detroit, and others—and was highly regarded by both producer associations and dealer groups in these and other markets. Dr. Gaumnitz had made analyses of economic problems relating to butter, cheese, and other manufactured products as well as fluid milk. He had worked mostly in the Mid-West and on the Pacific Coast. Consultants were called in from various branches of the dairy industry, and from universities that had been working closely with the dairy groups.

ISSUES TO BE RESOLVED

The drafting of the first milk marketing agreement—the Chicago agreement—proved to be a long and arduous task. It was temporarily concluded on July 28, 77 days

after passage of the act, by the signature of the Secretary. A number of major issues had to be settled before this or any other agreement could be drawn. Chief among these were the following:

1. *Who could be parties to marketing agreements?* The act seemed at first to be clear on this point, specifying "associations of producers" and processors or handlers. By the first, the framers of the act probably meant co-operative associations; by the latter, presumably individual firms. Yet certain members in the Administration had doubts whether existing co-operative associations could be accepted, since they were not associations of all the producers in a market. In fact, some co-operatives in some markets might represent a small fraction of the producers. Even if they could be accepted, as a matter of policy should they? If the co-operatives in a market were accepted as signatories, what was the status of the non-members? The act neglected to answer the latter question. After several days of debate between representatives of the Administration and of the producer associations, a decision was reached to accept co-operatives as parties to agreements. Arrangements were presently made to take care of the non-members in the Chicago market in part by automatically licensing all buyers in the market, thus assuring them the same prices as members, and in part by having the local milk council provide them with the other services which they needed.

2. *Was the licensing power to be invoked?* At the start the majority opinion in the Administration was against the use of licenses in milk markets. Much doubt was felt as to whether the provisions in the proposed agreement were enforceable against all the agencies distributing milk. The producer association representatives won their posi-

tion on this issue, but only after several weeks of conferring. The decision in the end was to impose a blanket license automatically upon all distributors.

3. *Would milk marketing agreements be under the AAA, the NRA, or both?* The milk producer associations had to bear the brunt of the fight which led to the President's transfer of the agricultural trade codes to the AAA. General Johnson wished to keep them under the NRA. The producer associations did not want their marketing agreements under the NRA partly because of its labor provisions, and partly because of the so-called Huey Long amendment (Section 5) to the NRA Act, which prohibits regulations which "prevent anyone from marketing or trading the product of his farm." The Chicago milk market had been afflicted with serious labor troubles in recent years, and both dealers and producers wanted to keep clear of all entanglements with labor provisions of codes. The Pure Milk Association of Chicago, in common with a number of other associations, was using a base-rating plan for regulating the flow of milk to market.

4. *Would the NRA labor provisions be included in the marketing agreements?* The transfer of code making to the AAA for the agricultural trades did not include the labor provisions. Labor representatives attended conferences and hearings and demanded that no agreement be approved until the NRA had taken care of the labor end of the situation. The Chicago agreement was presently passed, on the ground that wages and hours of milk-wagon drivers in Chicago were well up to the NRA standard. This precedent was accepted in later milk marketing agreements.

5. *What provisions for control of production, if any, should be included?* Most of the planning of production

control at this stage contemplated use of base ratings as a control device.⁵ Later discussion will show that any simple base-rating scheme is of little value for such a purpose. The marketing agreement proposed by the Pure Milk Association called for continuance of the system of base ratings determined according to production in the months of short production, under which market receipts had already been leveled out noticeably between seasons. Objections to this base-rating system were registered by producers in the Chicago milkshed who were not satisfied with their present or prospective assignment of bases. Within the AAA were groups who were suspicious of the base-rating plan as containing elements of monopoly. The production controls being set up for wheat and cotton frankly aimed at inducing monopoly prices by restricting the supply. The act was very specific with respect to the price-raising objectives of the production adjustment program, and the Consumers' Counsel and the Legal Division had no choice but to accept them. But they could not generally bring themselves to the use of marketing agreements as devices for raising the price of milk to a monopoly level. Some in these groups insisted that milk markets should be kept open to new producers, and that old producers should be free to expand their production if prices so warranted. They attempted to draw a line of distinction between restricting supply and letting the market make whatever prices it would with such a supply (as was planned for wheat and cotton), and the milk proposal to fix a minimum price to farmers and support it by restrict-

⁵ Base ratings are individual farm quotas, ordinarily based upon the production of the farm in the months of low production, and are intended to designate the amount of milk for which the producer is to receive fluid milk prices. In practice, the total base ratings in any market tend to exceed the fluid milk sales. See p. 196 for further discussion.

ing the amount of milk coming to market. Again, the wheat and cotton plans at that time were "voluntary"—that is, any farmer could refrain from signing a contract and produce as much as he would and market it as he would—whereas the milk proposal would in effect deny a market to additional production. Of course, the base-rating plan had been in use since before the Capper-Volstead Act had been passed, and had never run afoul of the courts; but as generally used it permitted producers to make higher bases if they wished at each new base-making period in the autumn, and new producers to establish bases with a considerable measure of freedom. Since 1930, however, the practice had developed of carrying over the old base ratings to the new year, on the ground that consumption had ceased expanding or was declining, and that the market needed no new milk. To use the language of the industry, the bases were "closed." This practice had not been attacked in the courts; but some believed that it was much open to attack.

In the Dairy Section of the AAA, the tendency was toward restricting supplies through some control of the granting of new or additional base ratings. Perhaps some would have gone so far as to apply the wheat and cotton production control procedure of limiting the ratings to the average production and sales for several recent years. But under the language of the act, such a restriction would have needed to be arranged through "voluntary" agreements with producers; and processing taxes would have been needed to provide benefit payments to induce the signing of such agreements. The prevailing opinion in the Dairy Section did not go to the point of accepting the contract, processing tax, and benefit payment procedure for fluid milk. Instead it inclined to the belief that the base-

rating system already in use could be made to do the trick. The final decision in the Chicago agreement was a compromise authorizing the use of the base-rating system, but keeping the market open to new producers subject to certain limitations and drags.

6. *What price provision, if any, should be included?* The proposal from Chicago was simply that the marketing agreement incorporate the existing collective bargaining arrangements, except that the prices thus agreed upon be subject to approval by the Secretary of Agriculture. The proposed form of the agreement included a schedule of prices already agreed to by the producer and dealer groups asking for the agreement. To the Dairy Section of the AAA this seemed the obvious and only reasonable arrangement. Here was a system of price making already well developed and functioning well in normal times—what could be more sensible than to take it over in toto? To those who questioned price fixing in marketing agreements and codes generally, there was the answer that it had been going on in effect for years in milk markets, under sanction of federal and state laws, and surely this was no time to abolish the practice. To those who questioned the need or desirability of fixing resale prices, there was the ready answer that experience had proved that producer and resale prices could not be changed independently of each other without seriously distorting dealers' margins and upsetting the whole market. To raise or lower prices one cent a quart at resale was equivalent to 46 cents per hundred-weight. Could such a change be made without any regard to prices paid producers?

Apparently no strong objections were raised to the proposal at this time from inside the AAA. Few knew enough about past experience with collective bargaining in milk

markets to have any weighty opinions on the subject. The principal opposition was from the smaller dealers on the Chicago market, organized loosely into the Chicago Milk Dealers' Association, who did not want to be subject to prices negotiated by the dominant large-dealer group on the market, organized into the Milk Council; and from a small group of milk producers who similarly did not want to be subject to prices negotiated by the Pure Milk Association. Perhaps a more correct statement is that these groups did not want any prices fixed at all, but wished to be free to fight their way into the market by underselling.

At a later stage, strong opposition to resale price fixing arose from chain-store groups, who generally maintained that the resale prices set for cash-and-carry customers were too high for two reasons: (1) that the wholesale prices set for milk sold to stores was too high; and (2) that margins allowed on cash-and-carry milk sales were higher than necessary. Chain and independent stores in Chicago had been selling milk mostly at the regular wagon delivery prices, largely as a matter of convenience to customers, and did not raise the issue strongly at this time. The roadside stands made more of a point of it than the stores.

The agreement finally arranged for milk set forth a full schedule of prices to be paid producers for Class I, Class II, and Class III milk—that is, milk consumed respectively in the forms of fluid milk, of cream, and of butter, cheese and other manufactured products. It also contained a complete schedule of prices for contracting distributors' sales, including a wholesale price schedule, a price schedule to stores, and a retail price schedule. The price to producers for Class I milk containing 3.5 per cent butterfat was to be \$1.75 per hundredweight f. o. b. country plants within the 70-mile zone. This was approximately 4 cents

per quart for milk of 3.75 per cent butterfat. Part of the milk paid for at this price was to be sold at a wholesale price in bulk of 7.5 cents per quart; part at a wholesale price in bottles of 8.5 cents; and part at a retail price to consumers of 10 cents. The margins to distributors under the agreement thus ranged from 3.5 cents to 6 cents per quart depending on the method of sale. A similar schedule was applied to cream.

This schedule of prices was arranged between the Administration and the particular dealer and producer groups who brought the proposed agreement to Washington. It was accepted by all the dealers who could be induced to sign the marketing agreement taken back to Chicago. It was imposed upon the rest—upon every dealer, store, roadside stand, and peddler in the city and its immediate environs—by the issuance of a blanket license that automatically included them whether they wished it or not. If these provisions were successfully executed, all shippers of milk within the milkshed, members and non-members of the co-operative alike, would receive the same f. o. b. price for all milk of a given grade sold for fluid milk use, except for differences that might arise from varying ratios between base ratings and Class I or fluid milk sales.⁶

7. What form of local administration should be provided? The decision was to leave the administration of the agreement in the hands of local agencies, the additional expenses to be met out of deductions from dealers' returns to producers. The dealers buying milk from co-operatives were already commonly following the practice of making collections for the co-operatives in this manner, and to add the small amounts additionally required by the milk council office would be a small chore. But the practice was

⁶ Explained in Chap. VII.

now extended to non-members and to dealers buying their milk, which raised difficult problems of enforcement which had to be considered seriously.

The deductions from non-members' returns could be limited to those added to the member's check-off for the purpose of maintaining the director's office. But in that case, there would be a different check-off for members and non-members; and differing rates of returns for milk in consequence, and this the producer association officials did not like. Accordingly, a decision was reached to make the check-off the same and then provide non-members with the more obvious of the services which members were obtaining from their association. These included the checking of tests and weights of milk and the guaranteeing of dealers' payments to producers. As will appear later, some of the producer associations did not like this latter arrangement in practice.

THE AGREEMENTS

The delay in securing the Chicago agreement was vastly irritating to the producer and dealer groups in the Chicago market and those working with them. By the time it was adopted the Chicago producers were already asking for an amendment to increase the price to \$2.00 or over. Mr. Holman of the National Milk Producers' Federation states that the Chicago agreement was rewritten 28 times. Part of the delay was unavoidable. No clear-cut program had been laid out in the act. The groups coming to Washington were suggesting plans for action with far-reaching implications which no one had had sufficient time to study. Long before the Chicago agreement was completed, groups had arrived from other markets with ideas differing from those of the Chicago groups, which could only have the effect of making those responsible stop and

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think. The representatives from any one of the markets were also constantly changing their own ideas. Conflicts of interests between different producer groups or different dealer groups, or between dealer and producer groups, added to the confusion.

Nearly a month passed before the next agreement was signed, and by the end of the year only the 15 listed in the accompanying table had been completed.

FLUID MILK MARKETING AGREEMENTS AND LICENSES IN 1933^a

Market	Effective Date of Agreement	Effective Date of License
Chicago.....	August 1	August 1
Philadelphia.....	August 25	August 25
Detroit.....	August 27	August 27
Twin Cities.....	September 2	September 2
Baltimore.....	September 29	September 29
Knoxville.....	October 9	October 28
Evansville.....	October 23	October 23
Des Moines.....	October 25	October 28
New Orleans.....	October 28	October 31
Boston.....	November 3	November 3
Alameda County (Oakland).....	November 7	November 14
Los Angeles.....	November 17	November 20
St. Louis.....	November 22	November 25
San Diego.....	December 15	December 18
Richmond.....	December 20	December 20

^a F. F. Lininger, *Dairy Products under the AAA*, p. 32.

By September the procedure in working out an agreement, and the essential features to be determined, were largely standardized. In the first place a tentative agreement was drawn by the producers and distributors in the market. In most instances a co-operative association of producers and the large distributors prepared the first draft. (Minority interests on each side were large in some markets and small in others.) This draft was submitted to the Dairy Section, together with an application for a public

hearing. Usually a conference was then called between the contracting parties and representatives of the Dairy Section, the Consumers' Counsel, and the General Counsel. In this conference attempts were made to adjust differences of viewpoint.

Following the informal conference was the public hearing. During the first four months all these hearings were in Washington, but thereafter they were held in the particular market concerned. A period for filing additional evidence was given, usually ten days following the hearing. The evidence was reviewed and the proposed agreement redrawn to include provisions prepared by the Dairy Section and the offices of the General Counsel and the Consumers' Counsel. It then was sent to the Production and the Processing and Marketing Divisions. After being approved by these divisions it was sent to the Administrator. When approved by him, it was sent to the Secretary of Agriculture, and when initialed by him it became tentatively approved. It was then sent out to the market for the signature of the contracting parties. Upon its return the Secretary attached his signature, issued the license, and set the date when the agreement and license should become effective.

At the outset the Administrator preferred to have the local groups prepare their own drafts of agreements, but the Chicago agreement at once became a pattern for those following. The Administration shortly began to urge certain features such as the base-rating plan upon all markets, making allowances, however, for any special conditions in a market, and building so far as possible upon pooling methods and the like already in use there.

The features that presently came to be considered in drafting the agreements were about as follows:

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Definition of terms and delineation of the milkshed and sales area.
Establishment of the interstate character of the market.

Fairness of provisions as to prices to producers for Class I, Class II, and Class III milk. The basis of purchase, the plan for equalizing payments between comparable producers, such as the pooling systems or other adjustment plans, and the plans for equalizing between distributors the so-called surplus, or excess of fluid milk receipts over fluid milk sales.

Production control provisions, if any.

Provisions for check-offs to the producers' association, the dairy council (if any), the adjustment fund, or any other service charges. Definite limitations on these check-offs were considered desirable.

Provisions for handling non-members of the association, new producers in the market, or others.

Reasonableness of distributors' margins and relationship between margins on various products or quantities.

Place of producer-distributor in the market.

Store prices: margins, relationship to wagon delivery prices, and change from present status.

Reasonableness of prices to consumers of milk and cream of various percentages of butterfat; of raw, pasteurized, and special milk; of quarts, pints, and other units; of by-products such as butter-milk, skim milk, chocolate milk, and cottage cheese.

Health and quality standards.

Schedule of fair practices—reasonableness and enforceability.

Organization or plan for carrying out the various provisions of the agreement, such as allotment of producer bases, handling of the adjustment fund, and equalizing distributors' surplus burden.

Equitableness of representation on any committees, boards, or councils that were provided for in the agreement.

Probable relative and actual benefits from the agreement to producers and distributors, and probable burden and benefit, if any, to consumers.

Relationship of prices to producers and consumers to those prevailing in the base period (August 1909 to July 1914), with due consideration for changes in other prices and in production and distribution.

Any other provisions in the agreement which might in any

manner affect the market, or various agencies in the market, or the public in general.⁷

The 15 agreements approved, however, were but a small fraction of those that were considered. Each day's mail during the summer was likely to bring one or more proposed agreements. Many were brought in by a group from the market. By the middle of September more than 100 had been received from markets in more than 30 states. A month later there were 150; and by the first week in December approximately 200, with only half a dozen states unrepresented. Informal conferences were being scheduled morning, noon, and night. Lawyers assigned to the legal staff of the Dairy Section and the few persons attached to the economic staff found themselves swamped with interviews. Each market vied with the others for a place on the calendar of the chief hearing clerk.

THE OPERATION OF THE AGREEMENTS

Long before December developments in various markets had raised serious doubts as to the wisdom of some of the provisions. Complaints of violations were registered within a few days after the Chicago license went into effect; and they increased in number each week. The principal reason for the violations was that the smaller dealers were in a position to sell under the license price, and they wanted to take advantage of their position. The offending parties justified their practice to themselves at least on the ground that special groups in the market were trying to get the government to support an arrangement which they had worked out in their own interests. Many of the violators believed that their interests had been ignored in the writing of the agreement and license; that for the most

⁷ F. F. Lininger, *Dairy Products under the AAA*, p. 33.

part they had not had a good chance to present their views, since they had not participated in the hearings and final negotiations in Washington. Many others not yet violators of the agreement and license had similar opinions of the situation. Hence there was a strong demand for a reopening of the agreements and the holding of public hearings in the markets themselves. Such hearings were eventually held in Chicago, Philadelphia, and Boston. The Boston hearing ran for eight days. Much of the time of these hearings was used in the airing of long-standing personal or factional differences in the markets. But they also served to give the Administration a clearer understanding of the situation in milk markets generally, and brought to light important details of the pre-existing local arrangements that had an important bearing upon the successful operation of various features of marketing agreements. In general, the facts brought out gave considerable support to some of the contentions of the minority elements in the markets, and indicated the need for revising in significant ways the set-ups outlined in the agreements and licenses.

The position taken by the principal producer associations and the larger dealers at the start of each hearing was that the agreement was about right as written and should be given a chance to show its merits under proper enforcement. Their position was that the difficulties largely lay in the failure of the Administration to enforce the licenses promptly and vigorously. Before the end of the hearings, however, the producer associations were generally more ready to accept changes, and came forward with amendments of their own.

It was a month after the Chicago agreement was signed before a Licensing and Enforcement Section was set up in the Processing and Marketing Division of the Agricultural

Adjustment Administration. District offices were established in San Francisco, Chicago, and Kansas City, with a member of the legal staff from the office of the General Counsel in charge of legal problems. Evidence against alleged violators of license terms was collected by the field staff of the Licensing Section, but prosecution of the cases was in charge of the General Counsel.

The methods of enforcement provided by the Adjustment Act proved to be cumbersome and time consuming. The only remedy specifically provided for enforcement of licenses was the revocation of the license of a violator, after notice and a hearing of evidence necessarily taking the form of a lawsuit. Regulations relating to the revocation and suspension of licenses had been set up by the Secretary of Agriculture in "General Regulations of the Agricultural Adjustment Administration, Series 3," approved by President Roosevelt on August 26, 1933. The first procedure under these regulations was against Meadowmoor Dairies, Inc., of Chicago, which the Secretary ordered on August 29 to file an answer within ten days to allegations of violation, and to show cause why its license should not be suspended or revoked. Under the regulations, if the accused did not file an answer within ten days, or if the answer was not deemed sufficient, a formal hearing was to be held not earlier than five days after the date set for the answer. In this instance the reply was not deemed satisfactory and a formal hearing was scheduled for October 5; but the hearing was cancelled when Meadowmoor Dairies sold out to a firm that signed the marketing agreement.

By October 6, however, 111 other persons and firms in the Chicago area had been ordered to show cause why licenses should not be suspended or revoked. Reports of violations from various markets and citations to show cause

why licenses should not be suspended or revoked were the order of the day. The first licenses revoked were those of two dealers in the Philadelphia milkshed on November 13.

Opposition to agreements and licenses came from producers as well as distributors and from both the large and the small. Certain dairymen with large herds of milk cows, as well as large groups of dairymen theretofore wholly or very loosely organized, rose to protest the proposals set up and to defend what appeared to them to be their constitutional rights. Time and again, of course, one heard the contention that if enforced, a particular license would deprive certain individuals or corporations of property "without due process of law." This and similar arguments were advanced frequently by small dealers. Certain large chain-store systems continued to wage a strenuous campaign against the licenses, not only on constitutional grounds, but also in terms of a plea of fairness to consumers, who they held were entitled to the savings of a system of cash-and-carry distribution of fluid milk.

That the contracting parties often did not represent enough of the interests in the market was a most serious defect. In fact, in some markets there was some question as to whether the dissenting producer groups did not actually constitute a majority. Likewise on the distribution side, there were often more distributors objecting to an agreement than there were favoring it. The contracting distributors in practically every agreement controlled more than half of the fluid milk distribution in the primary market; but a dissatisfied group of small dealers could raise as loud objections as the larger ones.

The most serious difficulties relating to enforcement developed in connection with licenses rather than agreements. Those distributors who voluntarily became parties

to the agreement were in general the ones who had previously purchased from the producers' bargaining association and had been accustomed to agreements covering the terms of their purchases. Furthermore, these distributors were for the most part the ones who had participated with the producers' associations in drafting the original proposals for agreements. The licenses were designed to impose these or similar provisions upon dealers who were not in accord with the agreements and who would not voluntarily become parties to them. Thus the licenses were used primarily to regulate the operations of a group of distributors who were opposed to such regulation. Enough producers in most markets did not support the agreements and licenses to make it relatively easy for violating dealers to secure what milk they needed.

Since issuance of a license involved legal compulsion upon those who had not signed the agreement, it became necessary in court to justify the license provisions (1) as authorized by the Agricultural Adjustment Act, and (2) as reasonably necessary to effectuate the declared policy of that statute. The AAA had to show that the retail price provisions had a reasonable causal relation to the maintenance of prices to be paid by distributors to producers, at the level fixed by the licenses. The first case testing the powers of the AAA was tried in the Supreme Court of the District of Columbia. Two independent milk dealers in Chicago asked for an injunction restraining the Secretary of Agriculture from using his licensing and price-fixing authority, on the ground that the Chicago agreement was unfair and that the price-fixing provision deprived them of property without due process of law, and was therefore unconstitutional. The Secretary's action was defended by the Department of Justice, the legal staff of the AAA assisting. Justice

Daniel W. O'Donoghue's denial of the plea on August 29, 1933 was couched in sweeping terms:

. . . the court finds that a national emergency exists, and that the welfare of the people and the very existence of the government itself are in peril.

The day is passed when absolute vested rights in contract or property are to be regarded as sacrosanct or above law. Neither the necessities of life nor commodities affected with a public interest can any longer be left to ruthless competition or selfish greed for their production or distribution.

The court finds that the Agricultural Adjustment Act passed by Congress May 12, 1933, is constitutional and that the regulations and licenses promulgated thereunder are reasonable and valid.

Accordingly the court discharges the rules to show cause, and refuses to grant the temporary injunctions in these two cases, and grants the motions to dismiss the two bills of complaint.

However, it was not until March 1934 that the Supreme Court of the United States, in the *Nebbia* case, by upholding the price-fixing provisions of the New York Milk Control Law, came to the support of the program. Perhaps until this decision the Legal Division of the AAA felt too uncertain of the constitutional status of milk agreements and licenses to launch a vigorous legal attack upon the problem of enforcement. At any rate, in the opinion of the contracting co-operative and dealer agencies in the markets, this phase of enforcement made extremely slow progress. They criticized the AAA for agreeing with the dealers to drop this case and for not carrying it promptly to the Supreme Court so that the validity of the agreement and licensing provisions of the act might have been determined in the winter of 1934. Many came to believe that the prevailing opinion in the Legal Section was against the constitutionality of the price-fixing and several other features of these early agreements. Events since strongly

suggest that neither the General Counsel nor the Department of Justice wished to go to court in defense of certain features of the agreements and licenses as then written.

THE DEVELOPMENT OF NEW ISSUES

The issues which came in for most discussion in the hearings and elsewhere in the fall months, following experience with the early agreements, were as follows:

1. *Resale price fixing.* Two things probably brought out this issue: the enforcement difficulties, and the opposition of some of the distributors, especially of the chain stores, to price fixing. The violations of licenses nearly all had to do with resale prices—all of the 111 on the Chicago market up to October 6. The chain stores were, in general, opposed to the policy of restraining competitors from underselling one another, deeming freedom to undersell the basis of our competitive economic system; and in particular were opposed to having their selling prices fixed at the same level or even a cent under that of wagon delivered milk. This group was able to make a very strong presentation of its case.

This no doubt helped the Administration to decide in September to propose abandoning resale price fixing as a general policy. The specific statement was to the effect that the Legal Section did not consider that sufficient evidence had been presented in the hearings to enable it to enforce resale prices, to determine the reasonableness of spreads allowed distributors, or to settle the issue over cash-and-carry differentials. Hence it was proposed that the Administration go forward with its program of raising prices to producers and of base ratings and equalization of sales in fluid milksheds; but that, pending receipt of the necessary information concerning margins of distributors and stores, it fix no resale prices except possibly maximum prices.

The National Co-Operative Milk Producers' Federation opposed this suggestion vigorously, demanding that the Administration at once requisition the evidence needed to support the resale prices in existing agreements or to determine needed amendments; and that it likewise require all agencies involved in pending agreements to supply the information needed within a reasonable time so that it could promptly approve these agreements, proclaim resale prices, and proceed to enforce them by means of licenses. The Federation believed that only through the fixing of resale prices could the dealers be assured of sufficient margins to insure their being able to pay their producers, and likewise only by such means could margins of distributors eventually be reduced.

The Administration decided to go ahead along the lines of its proposal in spite of the opposition. But milk distributors refused to sign agreements that would bind them to paying fixed producer prices and would not protect them from price cutting by non-contracting competitors. The AAA then offered to provide a minimum resale price as well as a maximum, this to protect distributors from the "unfair" types of competition, but still permit the more efficient distributors or distributing systems to undersell. This may have partly solved problems of margins and differentials; but it still left resale prices to be enforced. Four agreements were approved on this basis between October 9 and November 3—Knoxville, Des Moines, New Orleans, and Boston. The difference between maximum and minimum was only one cent; and nearly all milk was presently selling at the minimum.

Of the remaining five agreements approved before December 20, three contained a definite one-cent cash-and-carry differential.

2. *Consumers' prices.* As will be apparent, prices to con-

sumers became an issue of major importance. The marketing agreements were charged by persons outside the industry and by some within the AAA with sustaining the milk dealers in the profits they had made even on watered stock during 1930-32 while dairy farmers were suffering heavy losses and 10 million consumers were unemployed.

To meet these charges, the Administration set about collecting data on distributors' costs and profits in important markets, sending a squad of accountants into each. By the end of the year, data were available for several markets—Philadelphia, Boston, Chicago, and St. Louis; but differences of opinion arose as to their proper analysis and interpretation.

3. *Prices to producers.* The production indexes for butter and for other factory production show the following changes in 1933 compared with the corresponding months in 1932:

Month	Butter	All Factory Products
January	+ 2.3	—
February	— 4.5	— 3.5
March	— 2.8	— 0.5
April	— 4.5	— 2.1
May	+ 0.3	+ 1.7
June	+ 5.2	+ 5.8
July	+ 8.7	+ 9.6
August	+ 11.5	+ 11.5
September	— 9.0	+ 8.8
October	+ 6.5	+ 4.8
November	+ 2.4	— 2.6
December	— 7.5	— 9.2
January to December.....	+ 2.5	+ 2.9

This was in spite of pasture conditions 14 points under the ten-year average. By September, storage stocks of but-

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ter a fourth larger than normal had accumulated. Milk receipts increased in many milksheds and consumption declined further. This led to charges that prices had been set too high in the agreements, and that the additional surplus made into butter was breaking the market.

The chart of monthly changes in prices to producers (page 123) shows how butter prices rose rapidly in the false boom of mid-1933, and fell precipitously with its collapse, and more particularly as a result of the unusually heavy mid-summer milk production. Relief purchases of butter⁷ handled more or less as a price-pegging stabilization operation promptly restored prices to 24 cents; but they fell below 20 cents when the relief purchases slackened and finally ceased for a time in December.

It was in this sort of price situation that the price-fixing arrangements of the agreements and licenses had to be executed. The prices first granted for Class I milk in the 15 marketing agreements averaged 39 cents per hundred-weight above the prices immediately previous. In November the Chicago price was raised from \$1.75 to \$2.25, and requests for increases arose in other markets. The prices granted were above a level competitive with butterfat, cheese, and condensed milk prices in several markets, especially after butter prices fell to 18 cents in August. One side of the argument was for reduction of these prices on the ground that they made enforcement difficult if not impossible. The producer associations asked for prices nearer to parity, and insisted that vigorous enforcement was all that was needed to make them stick.

4. *Production control.* In the foregoing situation, it was natural that the base-rating plan included in most of the agreements would be charged with stimulating rather

⁷ See p. 354.

than restraining production. The most vigorous opposition, however, was from two groups within the milksheds: from non-members of co-operatives who had had no experience with it, many of whom had been selling their milk on a flat-price basis relatively higher than they were then receiving; and from members of co-operatives dissatisfied with their base ratings. The two groups in combination made formidable opposition in some markets. Many of the first group were almost belligerent. The plan met varying responses from co-operative members then having their first experience with it.

Opposition of an altogether different sort arose to the attempts in most of the agreements at limited control of milk receipts through defining of milksheds, or denying new producers the right to ship milk except under a "certificate of necessity," or in other ways. This looked like paraphernalia for securing monopoly prices, to which the Consumers' Counsel and others objected on grounds of public policy.

5. *Equalization of sales.* Accompanying the class-price and base-rating systems in Chicago and most of the early agreements was a scheme for distributing the returns to producers so that all of those with the same base ratings received the Class I price for the same percentage of their base ratings regardless of the dealer to whom they sold their milk. This was accomplished by having those selling more than the average proportion of their producers' base ratings as fluid milk contribute in proportion thereto to an equalization fund, from which dealers on the other side of the average were reimbursed for their losses from paying their producers the Class I price for more than their fluid sales. Under this system, a good many dealers, producer-distributors, and the like, who had pretty well

adjusted their purchases and production seasonably to their sales or had made satisfactory private arrangements for the handling of small excesses or deficits, found themselves, if obeying the license, required to make sizable monthly or semi-monthly payments into an equalization pool from which they appeared to get nothing in return; and of course many of them became violators, or if not protested loudly at public hearings or elsewhere. Smaller co-operatives in several markets similarly objected. They sometimes protested even though actually receiving higher net returns. The group of objectors on legitimate grounds such as described was in most markets augmented by dealers and producers who had not adjusted their receipts and production seasonably or were not in some other way carrying their share of the burden of the summer surplus. The usual discussion of the problem did not distinguish between the legitimate and other objectors.⁸

6. *The check-off.* Many non-members of co-operatives objected both to the check-off itself and to the idea of having its amount determined by the co-operative. Independent dealers objected to making the check-off.

7. *Representation.* Minority interests in the markets demanded representation of some sort on the local boards or agencies of various types that were set up, and in the revisions of the agreements and licenses that were sought. At the public hearings, frequent requests were made for representation of the consumers, or the public, on local boards.

One of the forms which the diverging opinions took was with respect to the provisions in a proposed "national marketing agreement for milk" relative to representation of various interests upon "milk industry boards." The agreement as drafted provided for each milk market a local

⁸ See further discussion in Chap. VIII.

"milk industry board" consisting of two members elected by the contracting producers, two by the contracting distributors, and a fifth, "to represent the consumers," to be elected by the other four. The Secretary was to have power to approve these elections. These local boards were to elect "district milk industry committees" consisting of one representative of the contracting producers, and one of the contracting distributors from each local board; these in turn to elect a "regional milk industry board" consisting of two representatives of each district to be chosen in the same manner; and these in turn to elect a "national milk industry board" consisting of two representatives of each region to be chosen in the same manner. The Secretary of Agriculture would have no power with respect to the membership of the district, regional, and national boards. The contracting producers and distributors must represent 70 per cent of the milk, and 60 per cent of the producers and distributors by number, in each milkshed and sales area. Prices were to be specified in the agreement, but could be changed at any time, subject to approval by the Secretary of Agriculture, by agreement between 60 per cent of the producers and 60 per cent of the distributors. The local board as such was to have no power with respect to prices except to arbitrate in case of dispute between the contracting producers and contracting distributors.

The Production Division, Consumers' Counsel, and others maintained that the interests of the public were inadequately represented in this plan; and the rights of the 40 per cent minority improperly protected; that this was a scheme for fastening upon the country a gigantic control of the fluid milk industry by the milk producer associations and their allied distributors. They asked to have adequate representation of public and minority interests

provided in the whole series of boards, and accompanying voting power in essential matters such as price.

The divergence of opinion within the AAA, especially with respect to resale price fixing, producer price policy, and production control, became greater as time went on—the Dairy Section and the Processing and Marketing Division of the general staff of the AAA generally taking one set of positions, and the Legal Division, the Consumers' Counsel, and the Production Division of the general staff of the AAA generally taking another set of positions. The issues thus became involved with the larger questions of major policy as to whether production or marketing adjustments were to be the major reliance of the AAA and whether prices could be raised and sustained without production control, although they were by no means identical with them, as later developments have made abundantly clear. Nevertheless there was sufficient connection so that Mr. Peek's withdrawal from the AAA, the submergence of the processing and marketing units, and the ascendancy of production control, meant only the domination of the points of view with respect to milk problems represented by the Production Division, the Legal Section, and the Consumers' Counsel. Dr. King had submitted his resignation as chief of the Dairy Section on several earlier occasions, and Mr. Peek's withdrawal was made the occasion for a definite and final severing of his connection with the AAA.

The foregoing account of policies and developments relative to fluid milk agreements during 1933 omits many details of significance. Some of these are discussed in the excerpts from Dr. King's statements on policy presented in Appendix D.

CHAPTER V

MILK MARKETS UNDER LICENSES

With the appointment of Mr. Chester C. Davis to succeed Mr. Peek as administrator on December 15, 1933, the functions of the Processing and Marketing Division were merged with those of the Production Division into a Commodities Division under Mr. Victor Christgau, formerly assistant to Mr. Davis. The Licensing and Enforcement Section was reorganized and placed in the Commodities Division. Effective January 20, all regional and district branch offices were discontinued. Accounting and auditing personnel were transferred from the Licensing and Enforcement Section to the Office of the Comptroller in the interest of efficiency. The new set-up called for assignment by the Comptroller and General Counsel of the accountants and attorneys needed to assist the Licensing and Enforcement Section rather than separate accounting and legal branches within the section.

On December 16, Mr. J. H. Mason of the Des Moines Co-Operative Dairy Marketing Association was appointed acting chief of the Dairy Section.¹ The Chicago agreement was cancelled on December 20 to take effect December 31, at the request of the producers' association. During the first week of January 1934, policy forming conferences on fluid milk agreements were held, with several specialists from agricultural colleges participating, and on January 8 a new policy on fluid milk agreements was announced.

¹ Mr. Mason's services were available only temporarily because he had already accepted the presidency of the Omaha Bank for Co-Operatives.

THE JANUARY POLICY

Incident to the announcement of the new policy on January 8, 1934, the following telegram was sent to the producers' associations who were parties to existing agreements:

The Agricultural Adjustment Administration advises you that changes in policy respecting milkshed marketing agreements announced today will not disturb your present situation until informal conferences with your representatives and other parties to the contract or local public hearings are held relating to proposed changes desired to make your agreement conform to the newly adopted plan. Meanwhile the Administration will exert every effort to sustain the present agreement prices to producers on your market. Concentration of future efforts will be upon establishment and maintenance of proper prices to producers as each market warrants without attempting hereafter to establish or enforce complete schedules of distributors' prices to consumers. In doing this, proper balance will be kept in mind between fluid milk prices and the prices of butter, cheese and other competing dairy products so that the final price to producers will be easier to maintain on an equitable and lasting basis. However, steps will be taken to protect the market against unfair competitive practices and in some cases definite minimum price levels will be established below which resale by distributing agencies will not be permitted in order that the whole market structure will not be endangered. Greater local responsibility and wider local representation than heretofore will be sought in drafting future agreements and in proposals to modify existing ones. Now that you are advised of the proposed new policy and our desire to modify your agreement by degrees to conform to that change we welcome suggestions from you and other parties to your agreement as to your desires respecting informal conferences or hearings in light of conditions now obtaining on your market.

On January 17 contracting parties to all existing fluid milk agreements were notified that all existing agreements would be terminated on February 1, 1934. The licenses, however, were to remain in effect until further notice or

until replaced by new licenses that would conform to the new policy of establishing producers' prices only.

The essential features of the new fluid milk policy as then conceived were outlined in the telegram quoted above, but need to be amplified somewhat. They were as follows:

1. Prices of milk for fluid use were to be kept in line with prices of butter and other competing dairy products. Parity prices for milk would be sought only in connection with a general production control program for all dairy products, which was to be developed as promptly as possible. Control of production was deemed the only effective means of securing parity prices.

Two methods were advanced and tested out in determining the level of fluid milk prices consistent with such a policy. The one which was called the historical method determined the average differential between butter prices and Class I milk prices during the pre-depression period 1925-29, added this amount to current butter prices to arrive at the current Class I price, and then attempted to adjust the result for changes in transportation costs and in quality requirements between the base period and the present.

The other method, known as the competitive approach, undertook to analyze the price-making factors in a given market. To the competitive price determined at the border of the milkshed was added a charge for transportation to the city, as well as a premium for quality, sanitation requirements, and special care in handling the milk. This premium varied from city to city and from one section of the country to another. In general it was estimated to be approximately one cent per quart of milk.

Still another allowance was added in some markets for convenience of location. In making this addition the representatives of the Administration were allowing for what

they called the "convenience factor." This was described as the preferred position of nearby or other groups of producers, because of which these producers constituted an ever present threat to disrupt the control of the market. Its importance was deemed negligible in surplus-producing areas and in small cities, although in some Eastern and Southern markets it was considered to be relatively important.

The two methods should give approximately the same results, and in application they did, except for crudities in the data and their use, and except for the circumstance that in some markets the price of Class I milk had been somewhat higher in the pre-depression years than could be explained by a competitive analysis. This condition was manifested by increasing proportions of Class II and Class III milk, or in various other ways. It also appeared that the differentials required to shift dairymen from Class II or III to Class I production might not be as high in 1934 as in the pre-depression years, unless sanitation requirements for Class I milk had been raised.

2. Control of production of fluid milk was not to be attempted independently of that of other dairy products except in so far as the base-rating plan might adjust production seasonally. New producers were to be allowed to ship milk, at least after a probation period; and milksheds were not to be restricted. It was believed that delimiting would have no meaning if prices of fluid milk were kept in line with those of competing products, since no outsider would have any inducement to become a shipper.

3. No resale prices were to be set, except possibly minimums in some markets to protect distributors against unfair competitive practices.

4. The licenses were to be rigorously enforced. The Ad-

ministration believed this would be possible with prices and receipts upon the basis above outlined.

5. New marketing agreements were to be put into effect just as soon as they could be developed along the foregoing lines; in the meantime, the licenses were to be hurriedly revised to hold the markets in line temporarily.

6. There was to be wider local representation as well as greater local responsibility in the drafting of marketing agreements and conduct of affairs under them. This decision grew out of the vigorous attacks made on the first agreements by the minority interests in the markets, and the belief that only with the co-operation of all local interests could agreements and licenses be effective. The local representation was to include the "public" as well as the minority interests.

7. Negotiation of agreements and the like was to be primarily with producer interests, rather than with the producers and distributors working in collaboration. What this would mean when the time came for drafting marketing agreements in which the distributors might or might not be parties was not made clear at the time.

SUBSEQUENT CHANGES IN POLICY

Such were the lines of the new policy as conceived at the outset. In practice, they presently began taking directions differing in some cases by many points of the compass from the foregoing. By the autumn of 1934, some of these lines were entirely lost.

First, as to the matter of local representation: In the haste to get new licenses to take the place of the old ones, there was less rather than more consultation with divergent local interests. The early licenses were in fact much more nearly imposed upon some of these markets than were

their original marketing agreements. Later licenses were much more carefully considered, hearings being held in the local markets.

Second, the new marketing agreements contemplated have not yet been developed, although the subject is still discussed. Most of the original 15 markets were still operating under licenses on December 31 and many additional licenses had been approved. The licenses issued in 1934 were distributed by months as follows:

February	5	August	3
March	7	September	2
April	6	October	1
May	3	November	3
June	4	December	2
July	12		

The delay in getting the markets on an agreement basis was necessary, if for no other reason, because important distributors in most markets continued to demand resale price fixing before accepting an agreement.

Third, the desired increase in local responsibility was not realized; indeed the net effect was quite the contrary. The Legal Section took the position that federal licenses must actually be federally administered; accordingly a federal milk administrator was sent into each market as well as a representative of the Licensing and Enforcement Division. The thought at the outset probably was that such a set-up would be retained, except with much more local direction of it, under a marketing agreement once a market was restored to order. But as enforcement hopes failed to materialize, the whole arrangement took on more frankly a federally administered character in most markets.

The licenses generally included provision for setting up a local industry board to settle the matters of concern not

reserved in the license and to recommend action to the Secretary relative to the rest. But thus far only Detroit has set up such a board.

The foregoing developments left the distributors for a while essentially with representation only indirectly through the producer associations through which they obtained their milk; but presently they were participating in conferences as before. They also continued to meet with the producers' representatives pretty much as before for the purpose of discussing prices and other terms of the buying and selling arrangements. The price and other amendments to the licenses to be sent to Washington for approval were frequently talked over in such conferences; likewise related resale prices not to be forwarded to Washington.

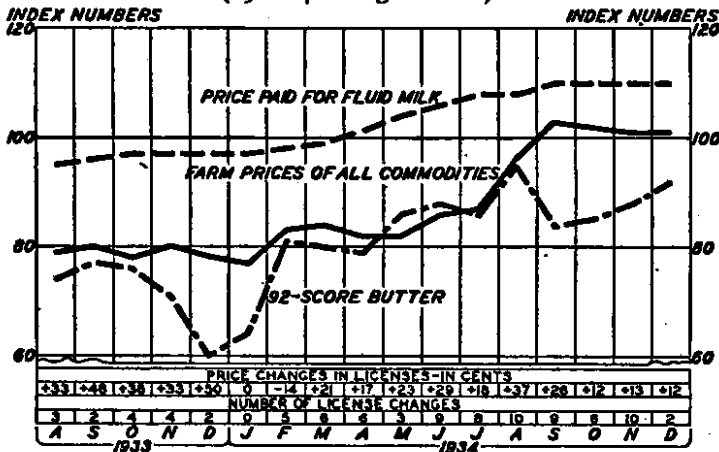
In markets where distributors and producer groups controlling a large part of the milk supply worked together on the foregoing basis, the licenses worked passingly well, although the outsiders who violated a license and were not brought into line, as commonly they were not, always provoked resentment against the AAA. In markets where a sizable number of small dealers or producers refused to co-operate, those suffering most from their cut-price competition were likely to become violators also, and presently the license became largely or wholly ineffective.

The major failure in carrying out the new policy related to general production control for all dairy products. A later chapter will describe how a plan was developed, offered for consideration, and dropped because of considerable opposition to it as well as doubt in the Administration itself. This left the new price and production control policies for fluid milk suspended in mid-air. With no parity prices for butter and cheese, there could be no parity

price for fluid milk if all prices were to be kept in line with each other.

As a matter of fact, of course, the prices written into the new licenses were not put upon a competitive basis even before the production control plan was dropped. Too much opposition to the policy arose from producer interests, and the price finally agreed upon was usually definitely above the competitive level, as is apparent from the curve of the monthly average of price changes shown in the accompanying chart.

COMPARISON OF PRICE CHANGES INTRODUCED INTO THE LICENSES WITH THOSE PREVAILING FOR BUTTER, MILK, AND ALL FARM PRODUCTS *
(1910-14 average = 100)



* Indexes constructed from data in current issues of *Crops and Markets*. Data on licenses and price changes compiled from current press releases of the AAA.

This chart is to be understood as follows: In August 1933 three licenses were approved with prices for Class I milk to farmers averaging 33 cents above the prices for Class I milk generally prevailing in these three markets

immediately before. In each succeeding month the prices in new licenses are similarly compared with prices in the same markets immediately preceding in so far as data could be obtained. The price changes presently introduced in amendments are combined with the foregoing. The numbers of changes include both. Unfortunately, satisfactory data could not be obtained for some of the markets. Obviously not enough changes occurred in most months to provide the basis for a good representative figure. This is particularly true of such a figure as that for December 1933. These averages, however, reveal the changes in fluid milk price policy of the Administration, beginning with the definite increases included in the 1933 agreements and licenses, followed by the decrease toward a competitive level in February 1934. All but one of these February changes were from higher prices in the same licenses under the old agreements and licenses. Part of the increases from March onward, and especially from June onward, represent additions to prices in old licenses already above the competitive level. The changes must therefore be interpreted as in part cumulative, that is, as further increases on top of earlier increases. The large increases in August and September during the drought are apparent, as well as the small increases late in 1934. The other price series in the chart show the steady increase in fluid milk prices, butter prices, and farm products generally, during the same period.

With the failure to carry out the competitive price policy, the production policy was also left in mid-air, since it had been based upon the assumption of competitive producer prices and of no inducement to new shippers. The competitive price policy had been adopted on the theory that monopoly Class I prices encouraged increased milk receipts

and price cutting; hence as one way of easing the enforcement burden. Now the markets were back on the old monopoly basis again, but with only minor restrictions on new or additional milk.

Reports of numbers of cows on January 1, 1934 indicated an increase of 3.1 per cent over the year previous, to the highest figure on record. But production per cow was low, during the winter in part because of high-priced feed, and in the spring and summer because of the poorest pastures on record. Total output of manufactured products for the first six months was 8 per cent below that for the year previous. Consumption, on the other hand, was 4 per cent greater, probably mostly because of relief purchases. Production kept up surprisingly well during the summer, and fall rains restored pastures in many sections. Total factory production for the year was only 4.5 per cent under that of 1933, only butter showing a decrease.

The first effect of these changes in the supply-demand situation was to ease the pressure of outside or new milk on markets in which the prices were out of line. The relief from this source was very uneven, however, since pastures were fair to good in the Atlantic states generally. The second result was a demand for higher milk prices with the price response already noted. The increases granted were usually accompanied by a provision removing the probation requirements for new producers. Production in most markets, however, failed to decline as predicted, and prices in several markets were lowered again in the autumn.

The policy with respect to resale prices was adhered to for the most part. In the Providence area the AAA agreed to enforce producer prices, working in collaboration with a state control board that was enforcing resale prices on its own responsibility. Since in practice in such a collabora-

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tion, the two sets of prices will be arranged more or less jointly, and with due regard to each other, this arrangement comes close to actual acceptance of resale price fixing. But it relieves the AAA from the burden of enforcement, which was a major reason for abandoning resale price fixing. It must also be evident that giving general administrative sanction, by virtue of maintaining in the market a license and a local administration, to producer-distributor arrangements under which they establish and maintain resale prices, approaches accepting the resale price principle.

The trends in policy and types of problems arising may be seen in a tabulation of the amendments to licenses in the last six months of 1934:

	Number
Prices changes:	
Upward	29
Downward	8
Producer-distributors' exemptions from the equalization pool:	
Entirely	3
Stated number of pounds	11
Established base	14
Base for exemption raised	1
Minimum resale prices:	
Eliminated	1
Initiated or changed	1
Changes in definitions of milk classes:	
Class I expanded	1
Class II expanded	4
Class III expanded	1
Class IV provided	3
Service and transportation charges adjusted	5
Reserve fund provided	10
New producers' restrictions:	
Relaxed	3
Removed	13
Sales area adjusted	5

Base-rating plan:	
Initiated	2
Removed	1
Market administrators' deductions:	
Increased	2
Reduced	1

In the course of the year the task of developing a license for a milk market became pretty well systematized, following certain general forms with various possible options that had been prepared by the staff of the Dairy Section. The principal variants related to whether or not the market operated upon a base-rating plan, as to whether or not country receiving stations were maintained, and as to whether or not a minimum resale price schedule was included. Many of the licenses in the Mid-West were without the base-rating features, but all had the provisions for equalization of returns as between distributors. The license for Detroit, Michigan (See Appendix E) has base ratings and equalization. Minor variations relate to the number of classifications, whether the base ratings include Class I and II milk or Class I only, definitions of these classes, the price basis for Classes II, III, and IV milk, adjustment for butterfat differentials, and the amount of the check-off.

MAJOR INCIDENTS OF 1934

A few of the important incidents associated with the foregoing policy changes were the following:

1. The Chicago milk strike, called by the Pure Milk Association on January 6, when the dealers made an offer of only \$1.40 per hundredweight following cancellation of the agreement. A truce was declared after five days and an arbitration committee created to settle the differences. Secretary Wallace refused to support by license the price settled upon by the committee of \$1.85 for Class I and

\$1.075 for Class II, stating that \$1.70 was the maximum under the new competitive price policy of the AAA. The compromise written into the new license of February 5 specified \$1.75 for Class I plus \$1.25 for Class II, approximately equal to the arbitration committee's price on a blended basis.

2. A series of conferences early in the year with representatives of several Northeastern state control boards relative to joint participation in enforcement of prices and other terms of licenses and state control board regulations. No basis of action was reached.

3. Secretary Wallace's attack on the distributors and producer associations at Madison, January 31, which included such paragraphs as the following:

Specifically, we did not want to set up a complete schedule of prices in any milkshed, involving retail prices as well as farm prices, until we knew whether existing prices charged by the distributors were reasonable. We could discover that only by access to the books. Yet we were urged by some of the most influential co-op leaders to set up the complete price schedule first, slap on a license, and examine the books later and at leisure: They seemed quite willing to risk the possibility of prices too high to the consumer, of excessive profits to the distributor, and in short, of an agreement that might prove to be unsound economically and therefore unenforceable. They were not only willing to risk it; they were insistent that we do so. Our suggestion last September that we start out with only the producers' price fixed, and issue licenses on that basis, fell on deaf ears. . . .

. . . It became a strange spectacle, this sight of farm folks lining up with the distributors in behalf of fixed retail prices, and arguing that higher farm prices were not possible without higher prices all along the line. We suspected that the distributors were making fairly handsome profits as it was; we were not inclined to raise the ante for them, or to protect them against competition beneficial to consumers and not hurtful to farmers, which might lower those

profits. Of even more importance, we feared going into an agreement which was not economically sound, which would invite competition from milk producers on the edges of the zone, and from independent distributors catering to consumer requests for cheaper milk; an agreement which would not have public support and therefore which could not be enforced. Nevertheless, as you know, we did enter a few such agreements, only to have our fears all too promptly fulfilled. . . .

Perhaps I should be a little more specific about it. Under the terms of the milk marketing agreements, we did look into the books of the distributors after the agreements were already in operation. . . .

Auditors for the Agricultural Adjustment Administration have completed their examination of milk distributors' books in some of the large milksheds. They have determined what they call the yield on net plant investment, and the percentage of that yield which may properly be classified as net profits. To get at this determination our auditors eliminated such things as high bonuses to high officials, and excessive charges for obsolescence and depreciation. They also chose, in getting at a defensible figure, to compute at reduced figures the salaries of some of the higher executives, for this purpose fixing a maximum of \$20,000.

I have the composite figures on distributors' profits in St. Louis, Chicago, Boston, and Philadelphia, for the five years ending December 31, 1933. These figures are for distributors handling from two-thirds to 90 per cent of the milk in these cities. As the government auditors—not the distributors, of course—figure, the distributors in these four cities took profits during the five years as follows: St. Louis distributors averaged 14.6 per cent net profit; Boston, 22.5 per cent; Chicago, 25.8 per cent; Philadelphia, 30.8 per cent. In 1933 our auditors' estimates indicate that St. Louis distributors averaged 7.3 per cent net profit; Chicago, 10.9 per cent; Boston, 16.3 per cent; and Philadelphia, 21.7 per cent.

Those figures speak for themselves. They explain one reason for our new policy on milk marketing agreements. I believe they support our determination to make future agreements between producers and the Agricultural Adjustment Administration, and to license the distributors to live up to our agreement. There is more of a chance, this way, it seems to us, that both the producer and the consumer will really get a new deal.

Milk distributors found difficulty in reconciling the above-mentioned auditors' reports with their own financial statements, partly, of course, because the auditors' analyses were made from a public utility or public price-fixing point of view, whereas their own were made from a private management point of view; but also in part because of an extreme, and in some respects irrational, interpretation of the public utility point of view represented by the auditors' results.

The officials of the country's milk producer associations greatly resented, and still greatly resent, the Secretary's charges of undue community of interests with the distributors, even though his speech at Philadelphia on April 2 contained praise of their efforts.²

4. The decision by the United States Supreme Court in the *Nebbia* case on March 5, 1934, affirmed, by a 5 to 4 vote, the constitutionality of the price-fixing features of the New York Milk Control Act. Justice Roberts wrote the decision, and Justices Hughes, Brandeis, Stone, and Cardozo concurred.

5. Appointment of Mr. A. H. Lauterbach as chief of the Dairy Section on March 10. He had been closely connected with the dairy co-operative marketing movement, but with the manufactured product phase of it, and was then manager of the National Cheese Producers' Federation.

6. The meeting of the National Co-Operative Milk Producers' Federation in March, to which non-member co-

²" . . . I think that in the future both producers and consumers will profit from the organizing which has been done in these metropolitan markets by the co-operative marketing associations. These co-operatives protected their farmers and have done as good a job of bargaining as they could with a surplus of milk at their backs.

"I believe that in the future, whatever we may do and whatever course the dairy problem may take, the development of co-operation is going to be of greater and greater importance. I should like to see co-operative effort grow throughout the dairy industry."

operatives were invited, which drew up resolutions demanding:

The immediate reinstatement of the old marketing agreements and supporting licenses in every market in which such agreements and licenses were cancelled by the Secretary of Agriculture, if a majority of the milk industry in the market so desire. We also demand the right to have marketing agreements and licenses of the old type placed in effect on every other market where a majority of the industry request such a marketing agreement and license.

[Removal] of those . . . in the Department of Agriculture and in the AAA who have so unequivocally demonstrated their inexperience, inability, inefficiency, and inaptitude in dealing with the fundamental problems facing our dairy farmers and who have attempted, and are attempting to impose upon the dairy co-operatives of this country arbitrary controls and alien principles which, if long continued, will obstruct the co-operative marketing movement in the dairy field and hinder the recovery of agriculture.

. . . It has been our experience that the AAA rather than helping our co-operatives is weakening and destroying them by public and private attacks and innuendos cast upon the integrity of our leaders, which is the age-old method used by distributors of farm products to destroy the faith of the farmers in their co-operatives, and by a disposition to give more consideration to chiseling non-co-operating minorities than is given to our co-operatives.

These resolutions were presented to a large group of senators and congressmen, mostly Democrats, including many from the South, at a special open meeting at the old House Office Building on March 23.

7. The Feisinger bill (H. R. 8988), which would have required the Secretary to fix retail prices, to delegate important powers to local industry control committees with personnel locally chosen in large measure, and to give such local industry committees control over new shippers through issuance of permits with right of appeal to the Secretary of Agriculture.

The Administration argued before the House Committee on May 3 that the resale price-fixing provisions, if the bill were enacted, should be expanded to give the Secretary the necessary public utility powers to go with it:

Without such safeguards, the proposed bill (H. R. 8988) proposes to apply public utility practice to the milk distribution business as to retail prices, but to omit all the corollary requirements which invariably accompany the use of governmental authority in this country to guarantee to public service enterprises the collection of definite charges upon consumers.

Although possibly we may ultimately work toward such a system of regulation of milk distribution, it should be recognized that experimentation along this line has only begun. Large forces would be required for the accounting work alone. The extensive machinery to undertake such an operation in the milksheds of the country does not now exist in the Adjustment Administration, which has numerically small forces. Assuming that profits and service must be regulated if retail prices are regulated, Congress should be prepared for a much more expansive governmental undertaking than any now contemplated by the Administration if the proposal of this bill is adopted. Our experience indicates that enforcement of resale prices in all milksheds would require a staff of several hundred lawyers, and that the cases would swamp the dockets of the courts.

The Administration also opposed the shipping permit proposal, on the ground that:

. . . Use of governmental powers to discriminate as between different groups of farmers has seemed to this Administration undemocratic and unjustifiable.

The erection of "tariff walls" around milksheds, creation of monopoly for farmers within, and exclusion by law of those outside, has the same unfortunate effects inside this country as erection of international trade barriers has upon world commerce. It leads to retaliatory action, which is injurious to the farmers and the public because it interrupts the economic flow of commerce.

The provision for local control committees was approved as in line with existing policy:

In all the licenses that have been issued provision is made for the establishment of a local control committee. On account of the emergency existing in many of the milksheds, licenses have been rushed through without taking time to establish local committees. In all licenses issued in the last few months, the market administrator with the help of those in the industry in his area has managed the operation of the license without a committee. It is the intention of the Adjustment Administration to immediately commence setting up industry control committees with the co-operation of those interested in the area covered by the license. It is also the intention of the Adjustment Administration to give some thought to establishing regional boards to help control the fluid milk markets. In delegating power and authority to industry boards or committees, it must at all times be understood that these boards are under the supervision of the Secretary of Agriculture, as he must control their actions, especially when such actions interfere with other sales areas. At no time should the industry committee or board be allowed to build barriers against economic flow of dairy products into their sales area.

Pressure for passage of this bill was relieved following conferences between its supporters and Mr. Lauterbach and other administrative officials, at which certain general understandings were reached, the most important being with respect to a plan of collaboration between the AAA and California under which the AAA would establish the producer prices and the state the resale prices. This collaboration was later ruled against by the Attorney General of California on the ground that the California act authorized state enforcement only of federal regulations. Later in the year, however, such collaboration was arranged with Rhode Island.

8. The underpayment of its producers in August by a major distributor in the Boston market, accompanied by a

demand upon the AAA, strongly supported by New England Milk Producers' Association officials, that resale prices be fixed in that market. The Secretary of Agriculture refused to grant resale prices and ordered the Legal Section to take immediate steps to enforce the license. The Legal Section and Department of Justice believed the case a good one to test the constitutionality of the price-fixing power of the act. The New England Milk Producers' Association ordered all milk shipments to the distributor to cease after a few days. The distributor agreed to cease its violations and make up the deficiencies in past payments to producers.

9. A series of court decisions during the year pointing increasingly toward denying the AAA power to fix producer prices on intrastate milk; and possibly toward defining the term interstate more narrowly than had been hoped earlier. (The United States Supreme Court has not yet passed upon any of these cases.) Also a New York case restricting state control of interstate shipment of milk.

10. The resumption late in the year of conferences between the AAA and state milk control boards relative to joint action. At these conferences, a general agreement was reached looking toward federal enforcement of prices paid for interstate milk, the AAA not being responsible for enforcing any resale prices. A joint federal-state advisory committee was proposed for purposes of consultation on matters of common interest.

THE LEGAL STATUS OF THE PROGRAM

The most serious aspect of the license program at the end of 1934 was the failure of enforcement in large measure. Adverse court decisions were responsible for this in part and also the considerable caution with which the Legal Section and the Department of Justice proceeded. It seemed

wise administrative policy not to carry enforcement efforts beyond what stood a reasonable chance of being sustained in the courts. The Legal Section considered the act seriously defective in its marketing agreement and licensing provisions, and had now concluded that much of the early procedure under these provisions was of dubious validity. Nevertheless, licenses had been revoked in seven markets, including some of those where court cases were pending. Additional enforcement cases were in progress in 14 additional markets, but would move to ultimate decision only as fast as court procedure would allow.

It is difficult, however, to give the full picture merely by an analysis of cases which had been formally entered on the docket of either the administrative Enforcement or the Litigation Section. Few of the violations reached the stage of actual legal attack. The market administrator, after exhausting his resources in securing enforcement, had reported the violations to the regional field investigation office, and there most of them remained. Increasing sums were due to the market administrators or to the equalization pools, amounting to over \$150,000 in one instance. There was an increasing lag in the reports to the administrators, or much open refusal to report further.

The following summary of the enforcement situation in selected markets in September is included to show concretely the situation that had developed. This date is selected for the inventory because it marks a turning point in the Administration's fluid milk policy, as will appear presently. However, the situation has changed very little since.

Boston: Two cases pending (*U. S. v. Dwyer* and *U. S. v. Chaloner*). Efforts being made in two more cases (*Seven Oaks* and *Westwood Farms*) to get a stipulation of facts both for the

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purpose of administrative hearings and for court hearings, in order to expedite trial. No additional cases being pushed pending the outcome of the above. (Since decided against the AAA in the lower federal court. See p. 150.)

Chicago: Three cases pending in circuit court (*Edgewater Dairy v. Wallace*, *U. S. v. Shissler*, and *Columbus Milk Producers*). No action as yet. Two other cases reported for compliance in September, but no action taken by the Legal Section.

Indianapolis: One case (*U. S. v. Greenwood*). This had received an adverse decision from the district court. Eight other cases pending in the Enforcement Section. The market in a serious condition. (License since cancelled.)

Louisville, Kentucky: One case (*Melwood v. Sparks*). This had received an adverse decision, but the license was being carried on through co-operation between remaining distributors and producers. No other cases pending because of the foregoing restraining order.

Oklahoma City: One case (*Douglas v. Wallace*). This had resulted in a general restraining order completely tying the hands of the market administrator. Motion to dismiss denied at a hearing September 10-11. Disposition of the petition for permanent injunction before Judge Vaught. No enforcement of license. (License since cancelled.)

Los Angeles: Two cases (*Kurtz v. Berdie* and *Hill v. Darger*). These had received adverse decisions. In the former case the court required that the money alleged to be due the market administrator be placed in the hands of the court, pending final decision as to the disposition of the same. Eight dairies involved. All other violations on which some action had been taken by Washington linked to the old licenses and being held up pending the outcome of the above. (Earlier adverse decision on these cases has since been sustained.)

Baltimore: The *Royal Farms* case, arising under the old license, still pending. A counter injunction against *Wallace* in enforcement of the new licenses was threatened. Five other cases under the new license had been reported to the Legal Section. Immediate enforcement needed to sustain the license. (Licenses since cancelled.)

Des Moines: One case (*U. S. v. Hillcrest Dairy*). Three other enforcement cases had been reported and one more not yet officially

reported owing to doubt as to the three. Two of these three violations were of the minimum price schedule. The Litigation Section recommended efforts to get a hearing on the minimum price schedule rather than proceeding with a "show cause" order. Final decision not yet made.

Flint, Bay City, and Saginaw, Michigan: One case (*Black v. Little*). Approximately 60 distributors involved. An agreement had been made by Department of Justice that further enforcement against the plaintiffs would cease pending decision of the case. Hence, enforcement virtually at a standstill.

Lincoln, Nebraska: Five enforcement cases in various stages of enforcement proceeding with the license of one defendant revoked, three other revocations recommended, and one pending recommendation of the presiding officer. Probable that only one case would be taken into court. None presented a strong interstate case.

Evansville, Indiana: Two cases (*Re: American Dairy Co. and Breezy Heights Dairy*). These would come up before the same judge who was to hear the *Greenwood* case (Indianapolis); hence action suspended pending outcome of that case.

Omaha-Council Bluffs: (Pine Crest Dairy). This case would be heard before the same judge as the *Hillcrest* case (Des Moines); hence action suspended pending decision.³

The Department of Justice began to take an active part in the presentation of these cases in July 1934 (with the *Dwyer* case in Boston);⁴ and at once set about developing a policy with respect to the number and types of cases it would present. The policy then adopted was about as follows:

With respect to the original agreements and licenses,

³ As a result of cancellation of licenses the cases in several of these markets are now (June 1935) moot, and probably will be dismissed unless their licenses are presently restored. The petition for rehearing has been denied in the Los Angeles case, but further action may still be taken. The Providence and New York decisions also affect the legal status of the licenses in several markets. See Chap. XI for details.

⁴ It has worked with the Legal Division from the beginning, and is more responsible for the conduct of the legal phase of the milk program than is commonly realized.

apparently little if anything could be expected through court action, as was indicated by the refusal by the Department of Justice to proceed with the *United Farmers'* case in Boston on the ground that the computations determining the amount due the pool had not been made according to the terms of the license; and with the *Kress* case in Baltimore because of doubt whether a cause of action existed for the collection of moneys due under the old license as well as because a case was pending which raised the question of the constitutionality of that license (*Royal Farms* case). This had led in at least two instances to an attempt to dissociate violations under the old license from those under the new for the purpose of a test case, irrespective of a clause in the present license designed to link the two together.

As to cases under existing licenses, the Department of Justice apparently has restricted its activities as follows:

1. Only representative suits under any one license will be prosecuted. All others and subsequent violations must wait.
2. The following must be clearly shown: (a) interstate commerce in the market as a whole and/or (b) interstate business conducted by the individual violator.
3. Favorable decision must be obtained in a lower court, or reversal of an adverse decision in lower court by higher court, before further suits will be filed under any license.
4. Suits under different licenses scheduled to be heard by a judge before whom another suit is pending, or who has given an adverse decision, will be held up for reasons stated above.

These conditions meant that methods of enforcement through court procedure were virtually exhausted for the time being until judicial opinion had so reinforced the licenses that subsequent proceedings in the lower courts would carry greater force. While the markets with court cases pending comprised only about one-third of those

under federal license, the effects of the enforcement delay resulting extended in varying degrees to all markets under federal license. Distributors in Port Huron, Lansing, Kalamazoo, Battle Creek, Grand Rapids, Muskegon, Ann Arbor, and Pontiac were keenly aware of the conditions in each of the other markets. The success or failure of the Indianapolis license had its repercussion in Fort Wayne, Louisville, and Lexington.

The effect of the foregoing enforcement situation upon the AAA officers was to drive them in the direction of depending less upon legal force and more upon collaboration with producer associations and distributor agencies in the markets. This fell in with an increasing tendency in the AAA to work more closely with the co-operatives and with processors and handlers.

DIVERGENT OPINIONS

These tendencies, and the growing departures from the policy announced in January, did not develop without a great deal of discussion within the AAA. This discussion soon revealed the fact that even those who largely formulated that policy were by no means in complete agreement. One line of cleavage related to local control and responsibility. Whatever they may have had in mind when they approved the announcement in January relative to more representation of local interests in the local authority set-up, in practice the Consumers' Counsel and a minority element in the overhead group in the AAA, supported in general by the Legal Section and by some elements in the overhead group in the Department of Agriculture, inclined increasingly, as spring and summer wore along, toward federal administration of the local markets and the exercise of a considerable measure of control by the

local milk administrator, whose every act was subject to approval in Washington. Several in this group eventually came to look upon a license federally administered as the only workable instrument of control in local milk markets. Another group, consisting of the Dairy Section for the most part, and the dominant element in the AAA overhead group, interpreted the January announcement to mean that the local interests really should run their own markets, subject only to certain requirements from Washington as to representation of minority interests and the public in the local set-ups, and to the exercise of veto power by the Secretary when necessary to keep local price and production control policies in line with the general AAA policy. This group continued to look upon licenses as devices to be retained only until marketing agreements could be restored.

The first group in general came to believe that restoring local control in these markets would be equivalent to giving a majority group, consisting of the largest dealers and the producer association, power to fix prices and control production, as had been done in many of the NRA codes. This AAA group, in common with a growing element in the populace at large, was opposed to such a policy. It did not believe that either the minority producer and dealer interests or the public interest would be sufficiently protected in any local set-up dominated by the milk producer associations and their contracting distributors. Some of its members came perhaps unconsciously to look upon the local milk administrator as serving largely to protect the market against the aggressive tactics of the milk producer associations. The issue between the two groups in the AAA therefore in some measure became one of attitude toward the producer associations and their contracting distributors.

In the local milk markets, the minority groups among producers, and the consuming public so far as it was aware of the situation, favored a program of federal control under licenses. The minority group among the dealers generally opposed the existing program because it set out to make them pay as much for their milk as the large dealers, and did not protect their margins by guaranteeing resale prices; but no doubt the group would have preferred federal control to local control if both provided the same price structure. The producer associations and dealers contracting with them not only objected strenuously to control by licenses, but in many cases refused or covertly neglected to carry out the terms of the license, or the requests or orders of the milk administrator, and this prevented an effective working of the licenses. They not only demanded a return to local control, but they wanted it pretty much as under the original marketing agreements, with little or no interference from minority interests and from representatives of the local public. In other words, they wanted about what the industries set out to get under the NRA codes. Officials of a number of the associations publicly expressed themselves in favor of a system of having the majority interests in the local markets given control over these markets, subject only to the Secretary's veto power on price changes and a number of matters covered in the license.

Another line of cleavage related to price policy. The Consumers' Counsel and those holding similar views urged prices to fluid milk producers as near to a competitive basis as possible. The milk producer associations were unable to understand why an agency set up to get the farmers higher prices, as was the AAA, should maintain a group in Washington which constantly opposed such price increases. The Administration could say to them that their

own continuing interests demanded that some one other than themselves consider price proposals from the consumers' point of view; but they were not really convinced. The Dairy Section and the AAA officials in general felt the necessity of denying the extreme demands of the association officials, realizing that the very nature of their positions in their organizations, and the set-up of the organizations themselves, led upon occasion to such demands; but these officials more and more took the position that the competitive price policy was largely without basis since the general dairy production control program had been abandoned. They became increasingly willing to consider milk as in some degree separate from other dairy products, as a commodity whose price could properly be raised even though prices of other dairy products could not be, provided means could be found of separating the source of supply.

This led to a third line of cleavage between the two groups, namely, to two different sets of attitudes toward production control for fluid milk. The same group that wanted competitive prices naturally wanted wide-open markets. The other group became increasingly willing to consider various types of restriction on supply as a means of supporting the higher than competitive prices that had been granted.

LATER DEVELOPMENTS IN POLICY

Late in the summer of 1934, Secretary Wallace, aware of these diverging opinions, asked the Dairy Section to formulate a careful statement of a workable program for fluid milk markets, which the Administration could consider and revise if necessary in the interest of the general AAA undertaking. This program when developed was expected

to serve as a plan for conduct of the affairs of the Dairy Section. The statement finally submitted early in October analyzed the experience of the AAA in undertaking to carry out the January policy, reviewed the current situation, and offered three possible lines of action for consideration, defined as follows: (1) open markets, with no restriction on milk receipts, and prices on a basis comparable with those of competing users of milk; (2) restricted markets, with receipts limited, and prices set somewhat above the competitive level; (3) "legalistic procedure," involving an attempt to hold prices above the competitive level with no restriction on receipts. The third of these was taken as describing the policy then being unsuccessfully followed. The recommendation was that any milk market be given a choice between the first two. The details of the procedure for restriction of receipts were left indefinite. Other recommendations were for closer working with the producer associations, and more local responsibility in milk markets.

Several general staff conferences were held on this report, which had the effect of bringing to a head the two conflicting lines of thinking above outlined. No public statement of a change in policy was announced, but the approval of changes in the Chicago license early in December, giving the Pure Milk Association control of the base ratings of its members and limiting the receipts of cream from non-members, can be taken as indicating that a decision had been reached to adopt the general outline of the program recommended by the Dairy Section.

No conspicuous moves immediately followed, however; the strong advance in butter prices late in 1934 when cattle went onto winter feed put the prices of Class I milk much more nearly on a competitive basis, making restriction of receipts unnecessary. Butter production in December was

12 per cent below that of December 1933. Farmers received 30.5 cents per pound for butterfat in January, as compared with a 33.1 cent parity price. A review of prices in 42 licenses in September 1934 had showed that nearly all were above a competitive level, although some only by small amounts. The average for the 42 markets was at least 30 cents above and possibly as much as 45 cents.⁵ But butterfat prices rose 10.5 cents per pound, equal to about 38 cents per hundredweight of milk, between September and January. Merely holding prices of Class I milk at existing levels would put the markets in line with the open-market policy above outlined. Price advances were in fact granted in but few licenses, five in all, between January 1 and the following May, and the increases ranged from 20 to 25 cents per hundredweight.

When occasion has arisen for amending any of the licenses in this period since December, the provision opening markets to new shippers, introduced into many licenses in the preceding summer and fall, has been removed. Other changes have been the increasing substitution of the provision for producer-distributors, now called the "standard," under which they are required to equalize returns only on fluid milk sales in excess of their base ratings; and the inclusion of a provision permitting the market administrator to disclose information about violators. Minimum resale prices have been omitted from the few new licenses written and dropped by amendment in a few others.

The outstanding character of the activity in the period since December 1934 has been its limited extent. The Administration decided in the late summer not to encourage the preparation of any new licenses until their legal status

⁵ Such calculations can never be more than approximations.

was settled in the courts and effective enforcement procedures could be developed. Only two new licenses were issued after December 1, 1934 and one of these took the place of an old one. Several other licenses have been considerably overhauled—those for Boston, Richmond, and Detroit—but the changes introduced were mostly in the nature of improving their form.

Licenses have been cancelled in nine markets since January, principally because court decisions had made them inoperative. The cancellation of the Chicago license on March 2 was at the request of the Pure Milk Association. The reason announced was that satisfactory contractual relations had been worked out with the dealers. Dissatisfaction with the local milk administration was also an important factor. The Providence license was suspended on April 4 because of Judge Letts' decision against federal fixing of producers' prices on intrastate milk.

This action in the Providence case, and the cancellation of other licenses, indicated a definite intent of the AAA not to continue with its program of control of milk markets unless it could have satisfactory support in court decisions, or amendments to the act that would make favorable court decisions possible. For the same reason, efforts to convict license violators have largely been suspended except in a few markets where "show cause" orders still have some restraining effect. The Department of Justice is proceeding with caution and little court action is now in progress.

In keeping with this intent, the final decision was to ask Congress for amendments that would clarify and strengthen the marketing agreement features of the act as needed to make possible its effective execution, even though the request for such power would be sure to arouse vigorous opposition from processor and dealer interests. The

amendments offered contained a clause that presently came to be called "the reserve clause" which would enable the AAA to compel any distributor to accept a licensing arrangement that a two-thirds majority of the producers wanted. The processors and handlers of the country at once launched a vigorous attack upon this proposal and at one stage appeared about to win the argument. Then came the Schechter decision which imposed such severe restrictions on the NRA procedures that they were largely abandoned. Many believed at first that the marketing agreement and licensing features of the Adjustment Act were similarly affected; but the AAA refused to accept such a conclusion and set about revising the amendments to meet the Supreme Court's pronouncements against undue delegation of powers and against extension of federal control under the commerce clause to include transactions only indirectly affecting interstate commerce. The "reserve clause" was retained. The revised amendments were shortly passed by the House, with only a few changes, by the Senate with several significant changes three weeks later, and were signed by the President late in August.

The major changes in the amendments affecting milk and other dairy products are as follows:⁶

1. Substitution of "orders" by the Secretary for the licensing provisions of the original act.

2. Provision that such orders shall not be issued unless handlers of half the volume of the commodity have signed a marketing agreement; or two-thirds of the producers vote for it in case handlers of more than half the volume refuse or fail to sign, and the Secretary and President after a hearing conclude that an agreement is necessary to effectuate the purposes of the act. The latter "reserve clause" provision met with much opposition from the handlers. A two-thirds majority of producers is required for approval of any "order."

⁶ See Appendix G for the exact form of the more significant parts of these amendments.

3. Specification of fixing prices to milk producers, not including resale prices, as necessary to effectuate the purposes of the act. The AAA apparently hopes that the courts will accept price fixing in interstate commerce if Congress authorizes it.

4. Provision for use-class and location price differentials. The differentials could, of course, in practice be of such a nature as to amount to a flat-price arrangement. Authorization of equalization of all sales within a market unless producers of three-fourths of the volume favor individual dealer pools. Authorization of base ratings and of a 60-day period during which new shippers will receive Class II or Class III prices. These provisions are stated specifically in order to meet the pronouncement of the court in the Schechter case that Congress can delegate its powers only under specific rules of action.

5. Provision that the orders in any marketing agreement shall instruct the Secretary of Agriculture to select an agency or agencies to make the rules and regulations needed to effectuate the terms of the agreement; or prescribe some other method of selecting the agency or agencies. This also is intended to meet court objections to undue delegation of powers.

6. Definition of *interstate* in terms of "directly" affecting interstate business. The intent of this change is to compel the court to define this term in future decisions.

7. Provision for using income from processing taxes and other sources for surplus purchases and the like; also for acquiring commodities upon which loans have been made.

8. Provision for payments of benefits in commodities that have been acquired "subject to the consent of the producers." This is part of the implementation for the "ever normal granary" that Secretary Wallace has been advocating.

9. Prohibition of market exclusion in milk markets.

A provision for the use of 30 per cent of the customs receipts for encouraging exports of dairy and most other farm products, or for diverting them from the normal channels of domestic trade, was again in the conference committee report on the bill after being voted out in the Senate, and appeared certain of acceptance on the floor of the Senate. The dairy interests supported this provision.

These amendments were worked out more or less in co-operation with the milk producer association group, and contain provisions defining more clearly the status of co-operatives under a marketing agreement. They did not go to the extreme in this and some other matters that this group outlined in its own list of proposed amendments. They represent a consolidation of the conclusions of the Adjustment Administration and of various outside groups as to the changes needed to make the act more affective. Many of the statements represent compromises between conflicting points of view worked out before the amendments were submitted to Congress or in sessions of the committees of Congress. As an illustration of such compromising may be mentioned the provision for a three-fourths vote before individual dealer pools can be included in agreements. The co-operatives wanted prohibition of such pools; the AAA insisted that agreements could not be arranged on any other basis in some markets.⁷

The pressure for liberalizing the loan provisions of the Adjustment Act, and inclusion by the House of authorization and support for measures facilitating export and diversion of "surpluses," were considerably strengthened by production and price developments in May and June. Milk production on June 1 was 4 per cent more than on the same date in 1934. Net into-storage movement of butter in May was the second largest on record. Wholesale New York butter prices fell from 29 cents in early May to 23 cents in mid-June. Production in most of the larger milksheds has not increased as much as elsewhere because prices of grain are still very high; but it is expected that the new crop will change this situation greatly. Pasture conditions

⁷ These amendments are analyzed in their relation to specific problems in several later chapters.

had improved to within four points of the ten-year average by June 1. Fluid milk prices have recently been lowered in a dozen or more markets to meet falling butter prices; but producer associations in several important markets are still trying to hold the high prices sustained by the low production and higher butter prices of the fall and winter.

Other developments of major significance since January are the establishing of co-operative arrangements with Massachusetts relative to the Boston market, discussed in Chapter XI; the renewal of negotiations with the states supplying the New York market, discussed in Chapter X; the Supreme Court decision in the oil case; the Supreme Court decision against fixing of prices on out-of-state milk by the New York Milk Control Board; the reorganization of the AAA, which included the transfer of Dr. Howe from the Consumers' Counsel to other duties in the Department of Agriculture and the dismissal of General Counsel Jerome Frank and several of his associates; the decision against federal price fixing in interstate milk markets in the *Seven Oaks* and *Westwood Farms* cases in Boston; and the resignation, to take effect July 1, of Mr. Lauterbach as chief of the Dairy Section, to become general manager of the Interstate Milk Producers' Association of Philadelphia. His post was filled by promoting Dr. E. W. Gaumnitz from assistant chief to chief.

The Supreme Court decision in the hot oil cases⁸ was in a sense a rebuke to the Department of Justice for bringing a case to court before examining it adequately. Its significance for the fluid milk program is that it led to a re-examination of the whole program and the preparation of a careful statement of the general grounds for action under

⁸ *Amazon Petroleum Corporation* and *Panama Oil Company* cases, decision handed down on Jan. 7, 1935.

it, in *Dairy Memorandum No. 2*, copies of which were supplied to all milk markets. It is expected that it will need to be supplemented by information special to each market. Judge Brewster's decision in the Boston case also declared the system of base ratings in use as a form of control of production, and hence not comprehended under the commerce clause; and equalization of sales as taking of property without due process of law. Its principal effect was to place the responsibility of keeping the license in operation, for the time being, upon the organized producers, the dealers, and the New England state control boards.⁹

Plans for reorganizing the AAA had been under consideration for some months, and were brought to a head by the decision to make the changes in personnel at this time. The major feature of the change in organization was the overhead combination of the various commodity sections under five heads: grain, cotton, livestock, tobacco and other special crops, and marketing agreements. The milk marketing agreements, along with the other marketing agreements, were placed under the overhead administration of Mr. J. W. Tapp, formerly assistant to Mr. Davis. The heads of these five sections, plus the heads of the Finance and Legal divisions, the Consumers' Counsel, the Administrator, and the Assistant Administrator (Mr. H. R. Tolley, also chief of the Program Planning Division), were constituted as an Operating Council, whose function is to determine the major AAA policies. The Dairy Section and the other commodity sections retain their former identity but are not all separately represented on the Operating Council. The office of Director of Commodities was abolished; and the Solicitor of the Department of Agriculture, a joint official with the Department of Justice, was

⁹ For further discussion, see p. 296.

given charge of the legal functions of the AAA, in accordance with the usual practice, which had been departed from when the Office of the General Counsel in the AAA was created.

The decision to make these changes in personnel developed in some measure out of the above noted divergencies in opinion with respect to milk marketing control. The objection was not so much to the opposition of the group dismissed to the recommended changes in policy, as to the tactics employed in their opposition.

The change with respect to the Consumers' Counsel was primarily a change in the role to be performed by it. One group conceived of the Consumers' Counsel as an agency to analyze in a scientific manner the effect of the proposed and existing price increases and processing taxes upon domestic and foreign consumption, and likewise of other provisions of production and marketing controls; and to report these to the administrative chiefs so that they might be fully aware of them in making their decisions and thus be prevented from going contrary to the provisions of the act with respect to effects upon consumption. Others conceived of the Consumers' Counsel function as that of defending the consumer against price increases and developing consumer resistance to price increases, a role necessarily inconsistent with the declared purposes of the Adjustment Act. Still others took a position somewhere between these extremes. Some in the Consumers' Counsel group became much interested in marketing reform, and appraised the terms of agreements and licenses largely from this point of view. The role which this group is now performing is more nearly the first described than the second, but includes consideration of whatever marketing reform can be achieved as an incident to control of marketing practices.

CHAPTER VI

PRICE RELATIONS WITHIN MILKSHEDS

The two preceding chapters have briefly sketched the experience of the AAA in dealing with the fluid milk situation. In the five succeeding chapters, an effort will be made to analyze the issues and problems that have come to the fore out of this experience. The objective sought will be a well-balanced discussion of these issues and problems with all the important differing points of view placed in proper perspective and relation to one another. Final conclusions on some of these issues will be reserved until after another year's experience in dealing with these problems. It is felt that what is most needed at this time is a clear statement and analysis of the issues.

The problems of fluid milk marketing are themselves intricate; and the conduct of affairs in this sphere of action has proved particularly vexatious. Let us first seek an understanding of the rather complicated set of price relationships that has arisen in fluid milk markets, then consider the operating plans and practices that have developed out of these relationships, and finally present the problem of public control that is involved. A major complication arises from the seasonal variation in milk supply. This, however, is not introduced until the following chapter.

HOW CLASS PRICES ARISE

The most fundamental of all problems in milk marketing is that of the price differential between milk consumed in the forms of fluid milk, cream, and other manufactured products. In an increasing number of milksheds, indi-

vidual producers actually receive two or more different prices, f.o.b. city plants, for different parts of the milk which they deliver to dealers: a so-called Class I price for one portion of their milk which in theory finds its way to consumers as fluid milk; a so-called Class II price for another portion which theoretically reaches the consumers as fluid cream; and probably a Class III price for the remainder, which theoretically is made into butter or some other product before it is sold.¹ Actually, of course, all the milk of all the producers may be thrown together in one lot, and what is not needed each day for fluid sales is converted to cream or butter; or the milk of some producers may be used in one way and that of others in another. But it is all paid for as if used according to the theoretical plan outlined above. In other markets, the producers get a flat or average price, which, however, may be actually computed by combining the amounts and prices according to the aforesaid three uses, a procedure which gives results about equivalent to the above, or which may be arranged by bargaining that takes account of the proportions going into different uses. All of this seems unnecessary and foolishly involved to those who have not given thought to the matter; but most of it has a sound explanation which we need to examine and understand.

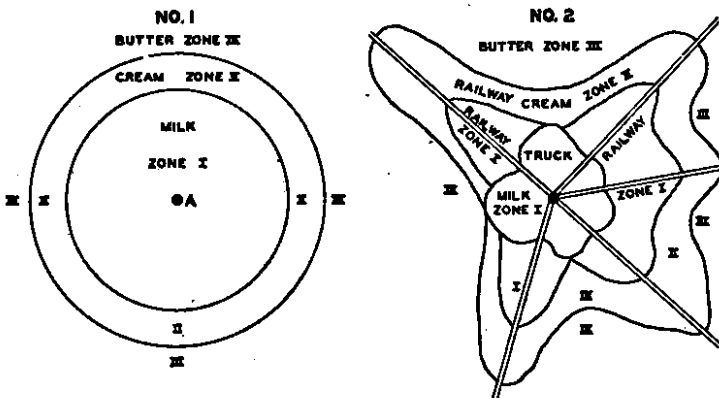
The fundamental reason for the foregoing system of price differentials according to use is the difference in cost of transporting milk, cream, and butter. The railway tariff on a hundredweight of milk shipped in a carlot from 200 miles out to New York City is 52.2 cents;² on the same amount of milk converted into 40 per cent cream,

¹ In some markets, still other classes of milk are defined and separately priced: for example, milk used in ice-cream plants, bakeries, etc.

² Passenger service rates.

6.0 cents; on the same amount of milk converted into butter, only 2.3 cents. Under these circumstances, if for no other reason, any city tends to get its supply of milk for fluid consumption from territory as close in as possible; and its cream from territory just beyond its milk supply territory. Thus around any city three zones tend to be located, a fluid milk zone, a cream zone, and a butter, cheese, or evaporated milk zone. If the city were seated in the midst of a perfectly level and uniform plain, and all dairy farms and dairy farmers were exactly alike, with all points at the same distance equally accessible to market, a system of zones would be found such as in No. 1 in the accompanying diagram.

IDEAL AND MODIFIED SCHEMES OF MILK, CREAM, AND BUTTER
ZONES ABOUT A CITY



In practice, the railway lines run nearer to some parts of the area than to others; also, territory nearer to market may ship by truck and that farthest away in glass-lined tank cars. The actual zone pattern may therefore be something like No. 2 in the diagram.

If the area is irregular in topography, as is much of the

North Atlantic region, the boundary of zones may be still more erratic. Because of long local hauls to a county milk receiving station, a cheese factory or a creamery may be found nestled in some valley 50 miles from market, though some milk is being shipped from a concentrated dairy section near a railroad 200 miles away.

Furthermore, individual farmers in Zone I may choose to separate their cream on the farm and ship it by rail to a centralizer creamery at *A*; or some one in Zone II to haul or ship cream into Zone III. Commonly these shippers are farmers who do not depend upon milk cows as a major source of income.

**HOW PRODUCTION AND CONSUMPTION BALANCE
WITHIN A MILKSHED**

The price of fluid milk delivered at *A* depends in large measure upon how far the city must reach out to get its milk supply; and this depends primarily upon how large the city is, how much milk and cream it consumes, and the density of milk production in the surrounding area. The volume of consumption in turn depends upon the income of the population, its established consumption habits with respect to milk and cream, and its response to changing prices of these foods. Density of production in turn depends upon the productivity of the land and its adaptability to dairying.

Many writers on agricultural topics speak of the "consumption requirements" of a population for a given food. There are no definite requirements for any food. The amount that will be consumed varies at any given time with the price; or, even if the price remains the same, with changes in the weather from day to day, with the season of the year, between holidays, Sundays, and week days,

with changes in income, and with changes in consuming habits over a period of years. As explained in Chapter III, the amount of milk consumed decreases or increases *relatively* little with a given change in price. Nevertheless, it does change, particularly in periods of reduced income and unemployment.

Similarly, there is no definite quantity of milk which a milkshed will produce regardless of price; and the quantity that will be produced at the same price varies from month to month and year to year according to the time of freshening of the cows, the condition of pasture, yield of feed crops, price of feed, availability of labor and wage of hired labor, and income from other products sold from the same farms. The changes in amount produced with changes in price are commonly referred to as the "elasticity of supply." Given time enough to make the adjustments, dairy farmers will increase their output of milk considerably as the price rises, by feeding more heavily in the first instance, in some areas by milking a larger proportion of their dual-purpose herds, by postponing the selling of old and less productive cows, and finally, by buying additional cows. Given more time, they will rear additional heifers and enlarge their herds in this way. If prices fall, these processes go into reverse, although not at the same rate or exactly in the same order. The elasticity of expansion of production is probably greater than the elasticity of contraction. All in all, the elasticity of expansion of production is probably greater than the elasticity of expansion of consumption; but the elasticity of the contraction of production is probably less than that of the contraction of consumption—at least, in most milksheds in recent years, the dairymen have not reduced their outputs with declining prices as much as consumers have reduced their purchases.

The nature and cause of the changes in amount supplied at the same price that come with the days and seasons, and with change in weather and pasture and crop conditions, need no explanation. The changes that come with a rise or fall in the price of purchased dairy feeds are real and significant—they involve balancing cash income against cash outgo. If farmers err either way in such balancing, it is generally in the direction of being too sparing in the outgo, with the result that a large majority of the dairy cows in the United States are commonly fed less than the most profitable ration. Changes in wage rates are much less significant, since much of the labor on dairy herds is performed by the proprietor and members of his family with wages ordinarily not involved. Of most importance in the Mid-West are the effects of changes in prices of competing farm products. With a rise in the price of beef, or a relative decline in the price of dairy products, hundreds of thousands of farmers in this section, particularly west of the Mississippi, turn to raising more steers and heifers, to letting the calves suckle the cows, to fattening some cows for market instead of milking them. In the areas practicing a corn-hog-dairy system of farming, as in the northern part of the Corn Belt, a shift may develop in a year or two toward feeding more of the corn to hogs and less of it to milk cows.

It follows that production and consumption of milk and other dairy products at any time stand in a sort of balance with each other. If production increases for any reason, prices fall and consumption increases; and the reverse if production declines. The sequence of change may of course start from the consumption side; for example, a decline of income may be the initial force. The relative elasticities of consumption and production determine how much the change in price will be. If the elasticity of ex-

-pansion of milk production is greater than that of milk consumption, the price declines a good deal, with consumption and production keeping in balance.

Some agricultural folks talk incessantly about the need of "reducing production to meet consumption," or of "adjusting production to effective consumption." Such language is inaccurate and confusing. Consumption and production always or almost always do attain some sort of balance. A price is reached which "clears the market" except in the few cases that some produce is offered that nobody wants at any price. One of the common ways in which markets are cleared of large supplies is that someone buys part of them and stores them in anticipation of shorter supplies and higher prices later. Another is that the producers themselves hold back their offerings until prices are better. In the case of fluid milk, part of a large supply in a market is sure to be converted into cream and sold in this form, and if this does not suffice, into butter, cheese, or evaporated milk, which can be stored for some time. It should be evident, therefore, that all talk of consciously adjusting production to consumption, or to "effective demand," or of increasing consumption to meet production, is illogical. However, the real idea that these persons intend to convey by such language is not unreasonable, that is, to *reduce production, or increase consumption, to a point where the market will clear at what they or somebody else considers to be a fair and reasonable price.* What this price is, of course, is a large subject, lending itself to a wide range of opinions. The majority of producers in a milkshed may think that it is \$2.50 per hundredweight; the majority of distributors, \$2.00; and other groups either more or less.

Within any milkshed in any particular period, therefore,

at some level of prices a balance is struck between milk production and consumption. The same is true for cream. This level is definitely related to the boundaries of Zone I and Zone II. The farther out a city must go for its fluid milk supply, the higher the price in the city, other conditions being the same. This high price checks consumption, but stimulates production per farm near to market and increases the number of dairy farmers within the milkshed. A balance is struck between these two forces which at any given time calls for a certain supply which requires reaching out to a certain boundary line for fluid milk, and to a second boundary line for cream.

This balance is not without relation to the process of distribution of milk in the city. If the margins of distributors are over large, ordinarily the consumers' price is somewhat higher and that of the producers somewhat lower. The lower consumption and production resulting will decrease the area of the milkshed, unless production per farm and number of dairy farmers within the milkshed are enough lower to offset the lower consumption.

HOW CLASS PRICE DIFFERENTIALS ARE DETERMINED

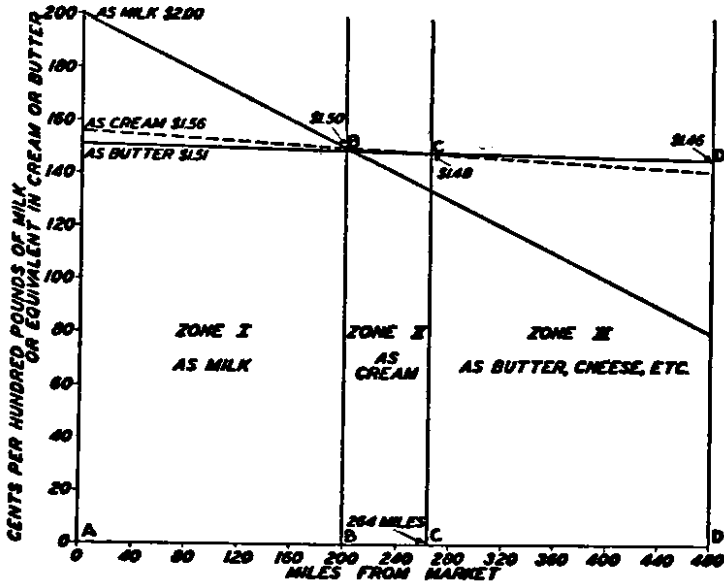
The amounts of the differentials between Class I, Class II, and Class III milk are dependent upon several factors, each of which needs to be analyzed separately. These are transportation costs, sanitation standards and the cost of meeting them, value of by-products, and local hauling and local competition; but the separate effects of these factors upon such differentials are difficult if not impossible to measure.

1. Transportation costs. Since differences in transportation costs are largely responsible for the existence of differentials between Class I, Class II, and Class III prices, it

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follows that the size of the differentials is closely related to the amount of the differences in the transportation costs of equivalent amounts of milk shipped in these various forms. How this is true is explained by means of the accompanying diagrams, in which *A* indicates the city market, *B* the

STRUCTURE OF DAIRY PRODUCT PRICES WITHIN A MILKSHED *



* See p. 160 for the assumptions made.

boundary between Zones I and II, and *C* the boundary between Zones II and III, the distances assumed being 200 and 264 miles respectively.³ It is further assumed that the rate for transporting a hundredweight of fluid milk is one-fourth of a cent per mile; of its equivalent in cream, one thirty-second of a cent per mile; and of its equivalent in butter, one ninety-sixth of a cent per mile.⁴ Thus the cost

³ The width of the cream zone has been exaggerated somewhat so as to simplify the diagram.

⁴ These are approximately the rates in the New York milkshed.

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of transporting butter from *C* to *A* is approximately 3 cents per hundredweight of the milk used in its manufacture.

If the forces of supply and demand as above described in market *A* make a receiver's price of \$1.51 for the butter in this hundredweight of milk, the producer at *C* will receive \$1.48 per hundredweight for it (\$1.51-\$0.03). Producers farther out than *C* will receive prices according to the line *CD*, so that at *D*, which is 480 miles from *A*, the net price will be \$1.46 per hundredweight. Inside of *C*, we have assumed that all the milk is needed as fluid milk and fluid cream. Any cream shipped from *C* to *A* would need to net the farmers \$1.48 per hundredweight or they would convert it to butter and ship it. To bring this \$1.48 at *C* cream would need to sell at \$1.56 in *A*, since the transportation cost at the rate assumed is approximately 8 cents per hundredweight of milk equivalent.

Cream shippers between *C* and *B* would receive net prices ranging above \$1.48 according to the line *BC*, rising to \$1.50 at *B*. This rate of increase is more rapid than beyond *C*, due to the higher transportation costs. Fluid milk shipped from *B* must net the producers at least \$1.50 per hundredweight or they will prefer to ship cream. To do this milk must sell for \$2.00 at *A*, since the transportation cost from *B* to *A* at the rates assumed is 50 cents per hundredweight. Between *B* and *A*, the net prices received by producers will rise still more rapidly according to the line *AB*, reaching \$2.00 at *A*. In fact, any producer who hauls his own milk in Zone I will receive \$2.00 for it delivered at the plant. If he hires it hauled, he will still receive the \$2.00, but will have to deduct the hauling charges. Thus arises the schedule of Class I, Class II, and Class III prices running at market *A* in the order \$2.00, \$1.56, and

\$1.51 per hundredweight of milk and milk equivalent. The line *ABCD* gives the profile of the prices received by producers at varying distances from market, shipping respectively milk, cream, and butter.

Milk prices are also sometimes quoted at country receiving stations at a specified distance from market, such as 100 miles out, or in the 90 to 100 mile zone. The milk price quoted 100 miles out in the assumed case illustrated by the diagram would be \$1.75; at 160 miles out, \$1.60.

This diagram and explanation may seem to be somewhat complicated; but actual conditions are still more so. The discussion following will undertake to relate these conditions to the diagram and bring the analysis as near as possible to actuality. As it stands the diagram brings out very clearly one important circumstance; namely, that no producer in *Zone II*, unless he had some special arrangement with buyers in the market, could afford to ship milk instead of cream, since if he did his net price would be lessened to the extent indicated by the dotted extension of line *AB*. The higher transportation cost he would pay on his fluid milk would more than offset the higher price he would receive for it after it reached the market. Similarly, no butter producer in *Zone III* could afford to ship cream; if he did his net returns would be lessened according to the dotted extension of line *BC*. Here also the higher transportation cost would more than offset the higher price for his product in the market.

It is also evident that the dairymen close in to the city normally receive a clearly higher price for their fluid milk than those near the outer boundary of *Zone I*. This is not a monopoly advantage. It is merely the normal form of economic advantage that comes with superior location. The nearby producers get this advantage because those

farther out cannot ship whole milk this distance from market without sacrificing a better paying alternative.

2. *Sanitation requirements.* A second reason for differentials between Class I and Class II prices, and frequently also between Class II and Class III prices, is that standards of quality are set up for milk and cream which involve some actual cash outlay and, what is probably more important, extra care and attention to the health and cleanliness of the cows, to the condition of the stables and equipment, and to the care of the milk on the farm and en route to market.

Whatever extra outlay is required, and whatever in addition is needed, as demonstrated by experience, to induce a sufficient number of dairymen to make the necessary extra effort to meet the sanitation requirements set up by a city, must be added to Class I and Class II price differentials. To illustrate, if experience proves that 10 cents per hundredweight is needed to induce a farmer selling cream to meet the city's cream standards, and another 20 cents to induce a cream shipper to meet the city's fluid milk standards, then the differentials of \$2.00, \$1.56, and \$1.51 used in the diagram on page 160 will be raised to \$2.30, \$1.66, and \$1.51 respectively; and the prices received at boundary *A* and boundary *B* will be \$1.70 and \$1.58 for fluid milk and cream respectively.

The amounts of the differentials will be determined at the boundary line. At these points different producers will have different reactions to the job of meeting the standards, determined by the kind of herd and equipment they have, their available capital for making the improvements called for, the supply of family labor available, the degree of dependence upon dairying as a source of income, and, perhaps more important than all else, upon their equipment of

aptitudes and psychological traits and attitudes. The amount of this differential will need to be just high enough to meet the resistance of enough producers to supply the city's demand for milk and cream of these standards at the higher prices resulting. The so-called supply and demand forces work out an equilibrium in terms of quality and prices as well as of quantity and prices. The location of boundary *B* may be either closer in or farther out as a result of setting up sanitation standards. On the consumption side, the higher quality of the milk may induce more consumption, but the higher price may more than offset this tendency. On the production side, the higher prices may induce more production within the 200-mile limit, but the extra care and expense involved may more than offset this increase.

The boundaries between the zones will not be hard and fast lines. Because of special circumstances of the sort named above, some producers five miles nearer the market may not attempt to meet the sanitation standards at the differentials that market forces establish; and some five miles farther out may consider the differentials well worth the effort, even after allowing for the freight differential in each case. The boundary is therefore a band or zone within which part of the dairymen dispose of their dairy output one way and some in another. If a line had to be drawn, it would be at the point of the average where half of them choose each method of disposal.

Before proceeding further, we should stop and examine the nature of the sanitation requirements actually in force. These can usually be classed under two heads: those which are designed to guarantee the production of clean milk from healthy cows, and those designed to protect the milk after it leaves the cow. Under the first category must be

listed health and cleanliness of the cows, specifications regarding the construction of barns and layout of barnyards, protection of water supplies, and cleanliness of stables. Under the second head are included the health and milking habits of the farm personnel, the type of milking utensils, the construction and care of a milk house and the sterilization of utensils, the cooling and storing of milk, and its delivery to the receiving station or plant.

Two general methods of control of the foregoing have been developed: periodical inspection of herds and equipment, and examination of the milk for sediment and bacteria. These two methods of control are today commonly practiced in the same market, as supplements of each other. Experience has demonstrated that inspection of herds and equipment is not sufficient in itself; superficial appearance may cover up much day-to-day carelessness in handling the milk. It does, however, help in securing the conditions necessary for the production of clean milk. Bacterial examinations are useful in detecting carelessness, but they are not made at intervals frequent enough to disclose promptly certain practices or conditions that may run the bacteria count into millions for several days at a stretch. Sediment tests are of great value if made regularly.

Regulations controlling milk supply vary greatly from city to city. Thus one of two cities as close together as Washington and Baltimore places the bacterial limit for raw milk at 20,000 per cubic centimeter, and the other at 50,000; one the limit on pasteurized milk at 40,000, and the other at 100,000. Many cities have higher limits than the higher of these. Supporting the more rigid of these standards ordinarily will be found exacting requirements as to lighting, ventilation, and whitewashing of barns, and frequent and thorough inspection.

The costs of meeting these standards can be considered under the head of capital outlays and current day-to-day costs. In extreme cases the capital outlays may be very large. Thus a farmer desiring to become a fluid milk shipper may find when his herd is examined that many of his cows react to the tuberculin test, and that his barns are not planned so as to provide satisfactory floors, lighting, and ventilation. He may even have to build a new barn and a milkhouse. The outlays necessary to meet the standards, reduced to an annual cost basis, including interest, depreciation, and upkeep, and divided by the hundred-weights of milk produced, will in some cases give a startlingly high figure. But one must not take such figures at their face value. In the first place, much of this capital outlay would have been needed if the dairyman was to remain a creamery patron and would presently have been made. On a going-concern basis, only the additional capital outlay made necessary to meet fluid milk requirements can properly be charged to fluid milk production. In the second place, on the ordinary farm, the capital expenditures required are limited to cooling and storage facilities and a small amount of remodeling of the dairy stable.

The special current outlays include inspection costs, special utensils (like cover-top pails), strainer cloths and towels, refrigerants, and sterilization solutions. Additional labor may be involved in keeping the barns cleaner than they otherwise would be, in washing the cows' flanks and udders before milking, in cleaning utensils, and in more frequent delivery of milk. If this labor is hired, the extra cash outlay may be appreciable over a year.

The costs of meeting sanitation requirements vary much between areas and markets, depending upon the type of ordinance and enforcement. The practice in some markets

is tending toward special emphasis upon inspections and formal specifications that may be expensive to meet; in others, toward more frequent examination of the milk and greater cleanliness and care in handling the milk. Experience and experimentation have both demonstrated that clean milk can be produced in very humble surroundings provided they are kept clean. Some of the differences between market requirements, however, are of fundamental importance. Thus one market may require milk to be cooled to below 50 degrees before delivery, which requires either the constant use of ice or a mechanical refrigeration plant. Another ordinance may require the milk to be cooled to 60 degrees only, which the farmer may be able to meet easily if he has a supply of cold water available.

The differentials required for meeting sanitation standards will vary from time to time as well as from market to market. In a period of rapidly increasing consumption, such as has accompanied the growth of most of our cities in the past, the producers in fluid milk territory may not make the changes in their herds, equipment, and dairy practices, and in their attitudes with respect to these changes, fast enough to meet the growing demand for milk. As a result the sanitation differentials will tend to be large. Once consumption starts declining, those who have already made the necessary adjustments, both physical and psychological, will commonly take rather small premiums before letting their milk depreciate in quality to its former levels. In fact, there is evidence that a majority of dairy farmers, once having made the necessary investments, and once having formed the habit of producing good milk, will keep on producing it at little or no premium, at least for some time. Reports from health departments of several cities indicate that the quality of

milk received has declined in the last three years. The reasons they assign for this do include low prices, but they make special mention of reduced budgets for inspections and analyses, and the addition of many new shippers. There can be no doubt that the period from 1921 to 1930 was one of abnormally high differentials for the reasons given; that since 1931 the necessary differentials have been much lower; and that this change has been a disturbing factor in markets.

It should be apparent from the foregoing that the necessary differentials to meet sanitation requirements can be determined only by the cut-and-try method, and will need to be changed from time to time.

3. *By-product differentials.* The farmer who changes from shipping cream to shipping fluid milk loses his supply of skim milk, which makes it more difficult and expensive for him to replace his old cows with heifers of his own raising.⁵ In fact, a majority of fluid milk producers close to large cities where fluid milk prices are high do not attempt to raise their own heifers. In consequence, they are not able to build up their herds by breeding, as are the cream and butter producers. This is indeed a serious disadvantage, which goes far toward offsetting the advantage of their location. Farther out from the city, most milk shippers raise their own replacements by feeding some

⁵ Milk is the only foodstuff that supplies all the essential food factors in a form adapted to the needs of the young calf. Where whole milk is sold at \$2.00 to \$3.00 a hundred pounds, a calf could consume more than its worth in a few weeks. Feeding skim milk is also impractical where whole milk is sold because of the inconvenience of separating the milk and marketing both milk and cream. Eckles and Gulickson (*Minnesota Agricultural Experiment Station Bulletin 215*) found the minimum annual requirements for calves to be from 432 to 879 pounds of whole milk fed alone, and from 161 to 506 pounds when fed with skim milk. Milk substitutes found on the market make good supplementary feeds, and lower the milk requirements of the calf, but they too are rather expensive.

whole milk for a while and finally substituting powdered skim milk and prepared calf foods.

In areas in the Mid-West, the cream shippers and butter producers feed much of their skim milk to pigs, and the corn-and-hog enterprise is an important source of farm income. Bacon and hams from hogs fed partly on skim milk diet are of superior quality and sell at a premium in markets affording special outlets for them.

Actually a hundredweight of skim milk has about the same number of total digestible nutrients as 10.6 pounds of corn selling on Mid-West farms (between 1925 and 1930) at from 60 to 72 cents per bushel; on North Atlantic farms, from 83 cents to \$1.02; and on Southern farms from 68 cents to \$1.01. Feeding experiments have even roughly verified the old assertion that 100 pounds of skim milk when fed along with corn to fatten hogs is worth half the market price of corn per bushel. In practice, however, dairy farmers either fail to realize these values from feeding skim milk, or fail to recognize that they do realize them, as is clearly demonstrated by the small differentials which they are willing to accept between butterfat delivered to creameries and whole milk delivered to cheese factories or condenseries.⁶ In the last analysis the net value of the skim milk to the farmer and to the dealer will be determined by the same sort of market valuation process as is the sanitary differential. It will vary greatly by areas according to the feeding use of the product and the other factors mentioned.

⁶ Some recognition must also be given to certain other factors, such as the expense of separating the cream from the milk on the farm or at country receiving plants, the trouble and expense of getting the skim milk back to the farm from the receiving plant, and certain by-product values salvaged by milk dealers in the form of cottage cheese, dried milk powder, and casein. These latter, in so far as a net profit is obtained, enable the dealer to bid a little higher for the fluid milk, and the necessary differential is reduced in this way.

4. *Local hauling factors.* Whether or not a given farmer will ship milk or cream or deliver his milk to a local butter factory, cheese factory, or condensery, may be determined more by the nature of the local haul required than by any of the foregoing. Milk for shipment to the city as fluid milk must be delivered in good condition to some receiving station once each day; likewise milk to be converted into cream at a country receiving plant, and in most cases cream separated on the farm intended for city use in fluid form. Condensery and cheese factory milk must also be delivered daily. Cream for butter manufacture in local plants is frequently delivered only at intervals of two or three days, especially during cool or cold weather. Country milk receiving plants cannot be operated economically except with large volume, which requires that the milk be hauled long distances. This is also true of condenseries. Local butter factories tend to be much smaller, and cheese factories still smaller than butter factories. These two phases of local hauling, frequency of delivery and length of haul, are probably more determinative where the hauling is hired than where the farmer does it himself; and the distances are so great for the majority of farmers supplying city milk and cream that only hauling in large commercial trucks is possible.

5. *Local competition for milk.* Clearly the differentials between Class I, Class II, and Class III prices will depend upon the nature of the other uses available in the area. The competition which is most nearly on the same base as fluid milk use in the matter of length and frequency of haul, and condition of milk upon delivery, is that of condenseries. For this reason condenseries are commonly located not far outside the boundaries of Zone I of some

milkshed. If they go out into butter territory, they find that too many of the farmers want to keep their skim milk at home. The prices they pay compare with those which farmers receive at the outer edge of Zone I or in Zone II, except that they may not contain very much of the premium in Class I prices required by sanitation standards. This probably accounts in part for the fact that two large national organizations combine fluid milk distribution with condensed and evaporated milk on an extensive scale; and that the same combination is made on a lesser scale by local enterprise in a number of markets. A large condensing plant near a city can take on the May-July flood of milk, and turn milk over to fluid use in the fall, without having its unit costs of operation seriously increased.

Competition between fluid use of milk and cheese factory use has always been close in some areas. Cheese factory patrons commonly need only to improve the quality of their milk and haul it further to turn it to fluid use. Always some of the farmers have been able to meet these standards with little or no change in dairy practice. The change can also be made without much disturbing the organization of the rest of the farm business. In times past, dealers in certain cities have followed the practice of taking over the whole milk supply of cheese factories when their usual supplies have been inadequate. Inspection requirements have now made this more difficult.

The easiest change for a butter factory patron to make is to shipping cream for fluid use. Many farmers whose dairy practice produces cream that meets city standards can make it in a day. More often, however, the change is made by the butter factory as a unit rather than the in-

dividual patron, and this may involve some form of grading and selecting the cream. This development has gone far in some territory, many butter factories having found outlets for cream a little more profitable than converting it into butter. This is clear from the fact that in recent years Boston has obtained cream from butter factories, producer association's plants, and other plants in the following states: New York, Ohio, Indiana, Michigan, Wisconsin, Illinois, Kentucky, Minnesota, Tennessee, Iowa, Missouri, and Kansas. A similar report could be made for almost any other large Eastern city. Much of this cream compares favorably in quality with that from nearby sources.

6. *The combined differentials.* The foregoing discussion has outlined five factors that contribute to or offset differentials between the prices of the three classes of milk: difference in transportation costs, difference in sanitation requirements, value of by-products, local hauling costs, and local competition for milk. Other minor factors might be named. If these could be measured and totals taken for any market, we would then have an accurate indicator of the differentials needed. Unfortunately scarcely one of them can really be measured. The transportation differentials could be measured if one could exactly locate the boundary of Zone I. Later discussion will show even more clearly that this is an uncertain band of territory instead of a line. However, it can in many cases be located with enough precision for the purpose in hand. The discussion of costs of meeting sanitation requirements pointed out that part of these might be expressed roughly in terms of annual costs, but that these would not fit in a period of either rising or falling consumption. The actual test of the cost

of meeting these requirements at any time is to be found in the producers' responses. At what price differential will they shift to or keep on producing fluid milk, meeting the sanitation standards set up? This can be determined only by observation of their reactions. Something about the prospective reaction can be judged by past reactions; but the periods compared must be similar as to trends in consumption, production, income, and related factors.

A similar statement can be made for the two other factors: certain elements in each can be expressed in figures, but the figures will not always fit the particular situation. The best test is again the producers' responses. But how separate the producers' responses to these separate factors? This cannot ordinarily be done. They must in most practical situations be treated as a unit. Taking the producers as they are, with all of these factors intruding themselves at once, how do they respond—that is, shift to, or away from, fluid milk production as the *total differential changes*? The transportation differential is ordinarily best treated separately and measured as definitely as possible.

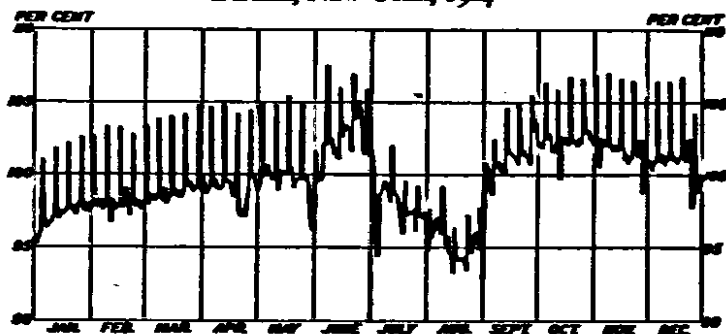
THE EFFECT ON PRICES OF DAILY RESERVE SUPPLIES

The structure of prices within a milkshed as above outlined must be modified in several important particulars because of additional complicating circumstances. The most obvious of these is that milk distributors must buy more milk than they are likely to sell in any one day. They can forecast only roughly the variations from day to day and from week day to Saturday, Sunday, and holidays, and must carry a reserve supply to be safe on this score. One reason for this is that changes in temperature and humidity from day to day affect milk consumption

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appreciably. The accompanying chart for New York City, prepared by H. A. Ross, illustrates these variations very effectively. On the supply side, a spell of hot, dry days in summer, or severe cold and storm in winter, may reduce production seriously so that it becomes necessary to sell the milk of more farmers than commonly. The milk of

DAIRY RETAIL SALES OF QUARTS OF GRADE B MILK BY ONE DEALER, NEW YORK, 1924*



* H. A. Ross, "Some Factors Affecting the Demand for Milk and Cream in the Metropolitan Area of New York," *Technical Bulletin 73*, U. S. Department of Agriculture, 1928.

enough farmers must be bought regularly to provide enough for bad days. Finally, the sales vary in an uncertain way from wagon to wagon so that small reserves must be loaded on each wagon to play safe. It is cheaper to do this than to make a second trip.

Some distributors or producer associations have solved this difficulty in considerable measure by maintaining a plant out on the edge of Zone I which normally produces cream, evaporated milk, cheese, or butter, but which can divert some or all of its supply to the city on a day's notice or less. The major variations indicated by the chart can be anticipated, and impending shortages due to special factors usually give a day or two of warning. The difficulty

of wagon-to-wagon variation in sales has been met in some measure by exchange between wagons or by sending out special wagons to serve as local traveling reserve depots for given sections of the city. But in spite of what has been done, dealers still find it necessary to buy considerable reserve milk to meet the foregoing contingencies. For Milwaukee, for example, this reserve ranged from 13 to 19 per cent of the daily average consumption for the years 1926-30.⁷ The distributors commonly convert to cream whatever of this reserve is not used on any day, this being one of the principal sources of their cream supply.

The point most to be noted about this reserve supply of fluid milk is that it is transported at fluid milk rates, but sold to consumers as a Class II or Class III product. This has the effect of extending Zone I far enough to provide this extra supply, which increases the maximum freight cost and the differential between Class I and Class II prices. If a 15 per cent reserve supply were allowed in the situation presented in the diagrams above, Zone I would be extended about twelve miles, the transportation cost to the margin of Zone I would be increased from 50 to 53 cents, and the price of fluid milk at *A* from \$2.00 to \$2.03. To insure the market of having enough cream when the milk zone is at its widest, the cream zone would need to be extended about ten miles, thus adding only 0.3 cents to the delivered cream price in the city. The differential between Class I and Class II prices at *A* would therefore be increased from \$0.44 to \$0.467. It is to be noted that except for the difference in costs of transporting milk and cream, this increase in differential due to the need for daily reserves would not arise. It is therefore not an in-

⁷ W. P. Mortenson, *Wisconsin Agricultural Experiment Station Research Bulletin 113*, p. 56.

dependent cause of class-price differentials. Perhaps it should be added that more producers need, for the same reason, to be prepared for inspection, and that this adds to the total cost of Class I milk to the city; but it does not widen the class-price differentials except as indicated.

The distributors buying on a flat-price basis make up what they lose from selling this reserve as cream instead of milk out of wider margins on their fluid milk, part of which is ordinarily added to the retail price of fluid milk, and part of which comes out of the producers' prices. Under a classified price system, the distributors usually pay the Class I price for only the fluid milk which is actually retailed as fluid milk as determined by their sales at the end of the month. Retail distributors, however, commonly take much wider margins upon cream than upon milk, probably enough to offset considerably the fluid milk price paid for part of it, although of course the expenses of retailing cream may be such as to leave little or no profit even at the high margins.

All the producers in the twelve-mile extension of Zone I would be shipping fluid milk regularly and hence would be subject to the additional differentials due to sanitation requirements, loss of skim milk, additional local hauling charges, and the like.

If, in place of the regular 15 per cent reserve, some of the distributors maintain emergency plants, as above noted, at certain points in the milkshed (normally near the boundary between Zone I and Zone II), the effects are somewhat different. If, as in practice in some markets, the health authorities consider that emergency conditions warrant relaxing inspection standards for the time being, the only additional costs involved are for a slightly longer haul. But if the farms are equipped to meet the city's

sanitation standards when the emergency arises and are able to stand inspection at any time, certain additional fixed expenses, borne the year around, will be involved. Somehow or other, sometime during the year, the producer in question will need to be compensated for these expenses. The same must be said for certain other items, such as the extra attention given to the cows and to the milk while it is actually being shipped as fluid milk; perhaps also for some extra local hauling. Normally, all the fixed and the special emergency expenses are met by higher payments to the producers delivering to such plants, these being passed on to the consumers in higher margins. This is surely better from both a producer's and a consumer's point of view than having the plant ship fluid milk the year round and sell it as cream except during the emergency period. Two types of expenses are saved thereby, the extra freight from hauling the product as fluid milk during other than emergency periods, and the extra daily care of cows and milk necessary to meet city standards during other than emergency periods. This latter may not be very important once the dairy farmers in the community have formed the habit of producing good milk.

THE EFFECT OF ARBITRARY DIFFERENTIALS

At this point in the analysis, it will be well to introduce a discussion of the effect on the price and structure relations outlined earlier of imposing differentials between Class I, Class II, and Class III prices, by arbitrary means or otherwise, greater than those accounted for by difference in transportation costs and the other four factors named above, or the producers' prevailing combined estimate of these factors. Let us suppose for illustration that the Class I

price was raised to \$2.08, the Class II price remaining the same. Then, a producer 240 miles out who shipped milk would get \$1.48 per hundredweight (\$2.08-\$0.60) at the assumed transportation rates. Then, all the cream shippers within this distance would appear to profit by shipping milk, and if the \$2.08 price were to stand for a little while, much of the dairy output inside the 200 to 240 mile zone would presently be shipped as fluid milk.

Now if population growth or increased per capita use of milk had brought about the price increase to \$2.08, then all the extra milk in the 200 to 240 mile zone would find consumers and all the producers inside the 240-mile zone would gain at this price. Or if the increase to \$2.08 had accompanied an equal increase of this amount in the costs borne by the shipper, such as might be due to an increase in transportation rates, or to imposing additional sanitary requirements on the city milk supply, then also the new price would stand and the boundaries of Zone I would not be affected.

One must remember in this connection that the area represented by a ten-mile zone gets rapidly larger outward from the market. The 200 to 210 mile zone, assuming the same density of production as in Zone A, would increase the fluid milk supply by 11 per cent; the 200 to 240 mile zone, by 44 per cent.

Suppose, on the contrary, that the price has been raised to \$2.08 simply by agreement between milk shippers and dealers, without an increase in consumption or costs to support it. Then if all the cream shippers shift to fluid milk, there will be much fluid milk loose in the market, worth only what it will sell for as cream, that is, \$1.56 per hundredweight. The usual outcome will be that some of the dealers will sell their surplus of fluid milk at less than

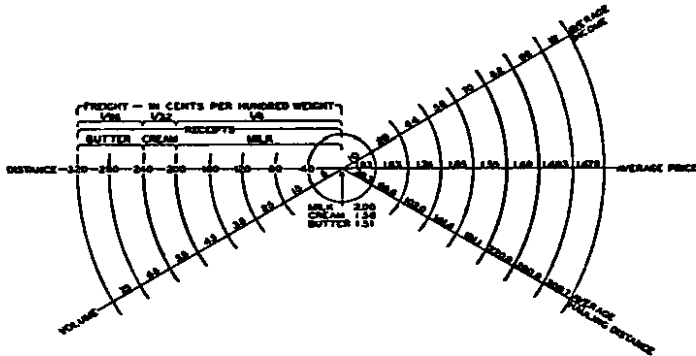
\$2.08 and thus restore the price to \$2.00, and the supply to its former amount.

If, however, the agreement of dealers and producers is held firm by imposing some pooling arrangement upon the market, *and all are made to share equally in fluid milk sales*, nearby producers along with the 200 to 240 mile zone shippers, the net returns to fluid milk shippers will consist of two parts, about two-thirds paid for at \$2.08 less fluid milk transportation costs, and about one-third at \$1.56, also *less fluid milk transportation costs*. They will gain 8 cents per hundredweight on the two-thirds, but lose more heavily on the one-third. The diagrams on page 180 compare the prices and returns by 40-mile zones on the \$2.00 basis, with all milk within the 200-mile radius shipped and sold as fluid milk and that in the 200 to 240 mile zone shipped and sold as cream (Case No. 1), with the prices and returns under the \$2.08 price and all milk within the 240-mile radius shipped as fluid milk, but one-third of it sold as cream (Case No. 2). It is obvious that the producers in Zone I would not be satisfied with these lower prices. But as soon as enough producers in the 200 to 240 mile zone got to shipping milk to bring the blended price below what they could get by shipping cream, some of them would normally begin shipping cream again and reduce the supply of fluid milk to a point where it would pay the rest to keep on shipping fluid milk. A surplus of about 12 per cent sold after reaching the market at \$1.56 as fluid cream would give all the fluid milk shipped an average or blended price of \$2.025, which is enough to offset the added freight for the nearest ten miles of the 200 to 240 mile zone, which would produce approximately this amount of milk. Thus a new equilibrium would be established, as a result of the artificial

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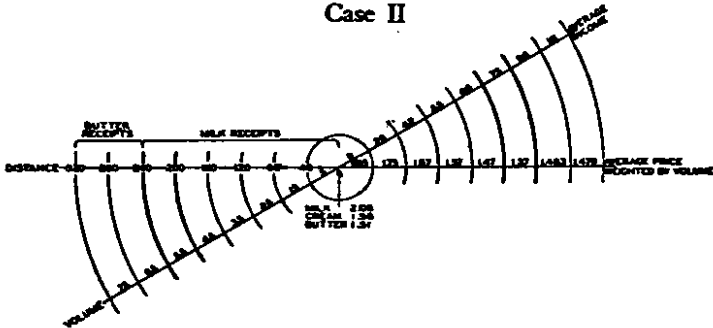
COMPARISON OF FLUID MILK PRICES AND RETURNS UNDER TWO SETS OF CONDITIONS *

Case I



(Volume, price, and income by 40-mile zones with fluid milk at \$2.00 supplied within the 200-mile zone, cream at \$1.56 supplied within the 200-240 mile zone, and butter at \$1.51 supplied outside the 240-mile zone)

Case II



(Volume, blended prices, and income by 40-mile zones with fluid milk at \$2.08, no increase in fluid milk consumption, and fluid milk shipped from the 240-mile boundary, 31 per cent of it—44 out of 144 per cent—or roughly one-third, being sold as cream)

* The volumes may be considered as hundredweights in thousands, the incomes as thousands of dollars. The hauling distances are the average bee-line distances to every point in the 40-mile zones. In the second diagram, the \$2.08 price is weighted 100 and the \$1.56 price 44.

price increase for fluid milk, with the boundary of Zone I at 250 miles. The extra 2.5 cents would be added to the price of all shippers within the 200-mile boundary, and net prices starting at 2.5 cents and declining to zero at 250 miles would be added to the income of those just outside the 200-mile boundary.⁸

This analysis assumes that the rise in price would not decrease consumption or increase production. If it did, the new equilibrium point would be something under \$2.025 and 250 miles. Whatever was left above the original \$2.00 would be monopoly gain to the producers resulting from their agreement with the dealers, which would cost the consumers the full 8 cents per hundredweight, except as this amount might be shaded by the effects of decreased consumption and increased production. From the standpoint of the community as a whole, this procedure would be wasteful since it would involve paying extra freight upon 12 per cent more fluid milk than was consumed.

The monopolistic effort might not stop with merely raising prices. It might extend, by means of various devices which will be discussed later, to preventing any producers outside of Zone I from shipping their product as fluid milk. In this case, the producers in Zone I would get the full 8-cent gain, except as it was cut down by lessened consumption and increased production within the zone, which effects might presently amount to as much as 2 or 3 cents. In this case, there would be no wasteful shipping of fluid milk from Zone II. We shall see later how in practice such control of supply was achieved in noticeable degree in important milk markets, especially in the East, and did have such effects on prices.

⁸ In practice, many of the new milk shippers would continue shipping milk at a loss, waiting for others to change back, and the fluid milk market would be disturbed for a long period.

CHAPTER VII

SEASONAL VARIATIONS AND ADJUSTMENTS

The major adaptations of the system of price relationships described in the last chapter arise from seasonal variation in the supply of fluid milk and a lesser seasonal variation in consumption, as a result of which many more dairy farms are needed to furnish a city's fluid milk supply in the fall and winter than in the spring and summer. The city's regular milkshed tends to include all the dairy herds which are needed at the season of lowest production. The excess milk from these herds at other seasons of the year is popularly called "surplus." This term, however, is generally avoided in the discussion following because it conceals much confusion of ideas.

THE PROBLEM OF SEASONAL VARIATION

The seasonal variation in milk production arises from the fact that cows invariably increase their milk flow when turned out to grass in May and June in the Northern states and at a somewhat earlier date in the middle states. The milk flow can be largely leveled down during these months by having a sufficient fraction of the herd dry, or almost dry, at this season, and freshening in July, August, and September; but this is a somewhat costly practice, the gains from the large spring flow on grass being foregone. Also, no time could be more unfavorable for freshening milk cows than during the heat and fly-time of July and August, and of September farther south. Cows freshened in the fall, fed grain and succulent forage such as ensilage during winter and early spring, and turned out to grass in

May, will produce more milk in a year than those freshening in early spring and getting most of their production ration from pasture; but their feed will cost more and call for more labor, although at a time of year when farm work is not pressing.

The extent of the variation, from 36 to 37 per cent above the average in June-July to 20 per cent below it in December for the United States as a whole, is indicated in the accompanying table.¹ The three lowest months are Decem-

INDEXES OF AVERAGE SEASONAL VARIATION IN UNITED STATES MILK PRODUCTION, 1925-29
(Average of 1925-29 = 100)

Month	Production per Cow	Number of Cows Milked	Production*
January.....	86	94	80
February.....	89	93	83
March.....	94	94	89
April.....	101	97	98
May.....	110	103	113
June.....	125	108	136
July.....	125	110	137
August.....	109	107	116
September.....	98	103	101
October.....	91	100	91
November.....	87	97	84
December.....	85	95	80

* The product of the two indexes.

ber-February; the six lowest months, October-March. The low month in production per cow is December; in number of cows milked, February. Production per cow is a much larger factor in seasonal variation than is number of

¹ These data on seasonal variations are based on the Bureau of Agricultural Economics (Dairy Statistics Committee) *Summary of Dairy Statistics*. The data on number of cows milked and production per cow are for a sample consisting of the farms of the crop correspondents, which are larger and better than the average farms.

cows milked. Production per cow increases more rapidly in the spring and falls off much more rapidly in August than does the number of cows milked. With the dry pastures, the heat, and the flies of late summer, even the cows freshening in the spring shrink in milk flow rapidly.

The advantages of spring freshening differ by areas. In the extreme Northern states where little grain of any kind, especially corn, is grown, and most of the forage is hay, fall freshening and winter production are considerably more expensive. Pastures here are also likely to be at least fair in July and August, especially in the East. As one goes south, grain is more readily grown, especially corn for silage, and summer pastures become poorer; hence the advantage of spring freshening is less.² Apparently, in the South the most favorable time is when the annual pasture crops first become available.

The variations in consumption by seasons indicated on the chart on page 174 for New York may be taken as typical of most markets. For 1919-24, the range was from 97.5 per cent of the average in January to 102.7 per cent

² Attempts to compare the costs of milk production by seasons commonly produce results that exaggerate the differences. To charge the expenditures of each month to the milk produced in that month, as is frequently done in such computations, makes the winter production in mostly spring freshening herds stand the maintenance of the cows which are dry or nearly dry in the winter, gives the pasture feeding the benefit of a high ratio of production ration to maintenance ration in spring and summer, and hence greatly overstates the differences. If labor costs are included, these are frequently charged at the same rate in winter as in summer, even though this labor might be largely idle on many farms if it did not have a herd of cattle to care for. One proper basis of such comparisons is the average annual expenditure upon whole herds of cows freshening wholly or mostly in the spring as against herds freshening mostly or wholly at other seasons, this being expressed on a hundredweight of milk basis. Another valid procedure is to separate the production from the maintenance ration, charging the former to the milk produced in the same month and the latter as an annual average rate per hundredweight of milk. The summer milk costs thus obtained will include a proper share of the carrying of the dry or nearly dry cows during winter.

in March. The high summer consumption of many markets is reduced conspicuously in July and August by vacations and summer camping.

With fluid milk consumption ranging only 5 per cent and production 57 per cent, a large seasonal surplus is left for use in butter, cheese, and evaporated milk. The seasonal range in production of creamery butter in 1921-29 was 70 per cent; of cheese, 84 per cent; and of evaporated milk, 88 per cent. February is low month for butter production, December for cheese, and November for evaporated milk. The accompanying seasonal ranges in prices were as follows: butter (New York 92 score), 17.3 per cent; cheese (Wisconsin Cheese Exchange, Twins), 18.0 per cent; milk bought by condenseries, 16.6 per cent. The range in price of milk retailed by distributors was 3.0 per cent in the same period.

The effect of these seasonal changes on fluid milk marketing is obvious. If a city needing a 50-mile zone for its fluid milk supply were set down in the midst of an average butter producing area, all the milk needed would be produced within a radius of 60 miles of the city in November and of 41 miles in June. In an average cheese area, the range would be from 64 miles in December to 40 miles in June.

Granted fully competitive conditions and an easily shifting supply, the price of milk would rise in the fall and winter for two reasons: one the greater transportation cost to the more distant boundary, and the other the higher price of butter and cheese in these months. The transportation factor alone would change the price in the illustration by about 5 cents per hundredweight in the butter area, and about 6 cents in the cheese area.³ The accom-

³ Based on railroad rates in these areas.

panying range in butter prices equals about 25 cents per hundredweight with butter about 30-35 cents per pound. Moreover, assuming the same sanitation standards for all milk, a considerably larger number of barns and herds would need to be kept ready for inspection, and the milk would need extra hauling and special care while being shipped to the city. Under full competition, the extra expenses thus caused would tend mostly to be attributed to the period of short production. Dairy farmers would reason that if it were not for shipping milk to the city during these few months they could save this extra expense and trouble, and would insist upon getting enough extra for their milk during this period to compensate them entirely. The sum total of extra expenses and alternative costs built up out of the foregoing items is somewhat formidable; and in an earlier period was in considerable part reflected in seasonal variations in wholesale milk prices. The average wholesale price in New York during 1914 varied from 2.7 cents per quart in May to 4.2 cents in November and December, or a change of over 35 per cent.

With retail prices varying only slightly and buying prices varying much, distributors took losses on their milk in the months of short supply, and made up the difference in other months. They did not like to deal with a frequently changing retail price, and also early came to the conclusion that frequent price changes disturbed consumption unwisely. But neither did they like taking losses at times, and hence they strove to pass the uniform prices back on to the producers. To the extent that they succeeded, they took away the price incentive to more even production.

Certain offsetting tendencies, however, appear on the production side. The significantly higher prices received

close in to cities commonly lead to a higher degree of specialization in milk production in a belt just outside the fresh vegetable and small fruit belt, and frequently overlapping it in part. These farms rely on purchased feeds in large part, which are as cheap in winter as in summer. Also, many of these large producers, especially in the South and East, and around the smaller cities, undertake to distribute their own milk, if not at retail, then at wholesale to hotels, restaurants, stores, etc. Such distribution calls for nearly uniform production over the year. These producers can buy from their neighbors or arrange other temporary sources during some of the time, but cannot be sure of quality if they do—and many producer-distributors make quality a special selling point. In fact, many of them are producers of certified or Grade A milk, or of Jersey, Guernsey, or other high-testing milk.

The combined effect of the foregoing developments has been a considerable modification of the structure of dairy production in Zone I. Production practices have come to differ considerably at various distances from the city; also the amount of seasonal variation has been appreciably reduced, especially near in to the city—and with it the radius of Zone I in the season of slack production.

A further development, most intensive since the World War, contributed the next step in dealing with the seasonal problem; namely, the rise of co-operative associations of milk producers. These found it very hard to deal with members whose milk was shipped to the city only part of the year. Some associations tried to exclude the irregular shippers from membership, but in the end always took them in to stop their underselling. The associations thus found themselves during most of the year with a considerably larger supply of milk than they could sell as fluid

milk. Some of them tried to work out schedules of payments to members that would stimulate fall and winter production and thus even out supplies over the year; but the premiums offered were never high enough to accomplish the objective.

Perhaps it needs to be pointed out here that the payment of a higher average price for milk that is seasonally regular in flow than for the opposite has a sound economic basis. Under natural conditions, without the interference of special price arrangements by dealers, milk would sell for more in the fall and winter than in the summer, and those with the larger winter production would receive higher average prices.

The early history of milk producer associations is rife with debates and conflicts with dealers over methods of paying for milk under the foregoing circumstances. Some of the associations sold the dealers only what they wanted each day, and disposed of what was left by sale to processors or in processing plants of their own, as explained in Chapter II. The bargaining associations commonly made a deal with the distributors under which the distributors handled the seasonal and other "surpluses."

The price negotiated in the early contracts of bargaining associations commonly specified a single price regardless of the proportions in which the milk was sold as fluid milk, cream, or butter. The dealers took their estimates of these proportions into account in making their bids, and the associations in accepting them. Obviously such negotiations needed to be based on definite data as to use of the milk. Without such data, the producers became suspicious that the dealers were selling more milk at fluid prices than appeared on the surface. Hence arose the system already described of paying for milk according to use. The as-

sociations were also increasingly given the privilege of examining the sales records of the distributors for the purpose of checking the data on sales according to use. At present, the agreements with associations are nearly all written on a use basis.

Distributors' purchases from outside the associations, however, are still ordinarily on a single-price basis. Only part of the contracts between associations and distributors call for exclusive use of association milk. Many of the distributors object to such contracts. Thus, in some cases, the dealers are paying for member milk on a use basis, and for non-member milk on a single-price basis. In such cases, the dealer's flat price to the non-member cannot go significantly below the average price received by members without making them join the association; and most distributors prefer not to have too large a proportion of the producers in the association. (At least this was true earlier.) If the dealers pay the non-members a flat price that is really higher than the blended price, this arouses friction with the co-operative and stirs it to demand an exclusive contract.

In numerous cases, however, the agreement with non-members calls for taking only as much milk as the distributor needs for his fluid milk sales. The producer adjusts his production to the dealer's purchases, or disposes of his extra milk in some other way. This is most likely to be true of the purchases of small "independent" dealers who buy all their milk directly from producers, commonly taking only as much as they need for fluid sales and day-to-day reserves. If these small dealers need cream for their wagons, they may buy it in the open market or make special arrangements for it.

The price paid in such cases should be essentially on a

Class I basis, and not the average of Class I, Class II, and perhaps Class III prices which the association member receives. If the producer has evened out his supply over the year to meet the needs of his dealer, he has probably raised his unit costs thereby and needs a Class I price to compensate him for it. But no doubt many dealers pay such a producer somewhat under the Class I price. This condition is likely to prevail in territory clearly within Zone I, since ordinarily the alternative outlets have entirely disappeared here. The remaining outlets in this nearby territory, if any, are condenseries, or city centralizer creameries which make butter from shipped-in cream.

In territory near the boundary of Zone I, either inside or outside of it, where butter or cheese factories or condenseries may be within reach, the non-member producers are likely to market surplus milk at prices which bring the average for all milk down to the level of the member producers' prices.

Even though the single prices paid such producers are entirely proper, they may constitute a disturbing element in the milkshed. The co-operative members in too few cases make sufficient allowance in their thinking for the sacrifices which the non-member has made to get these Class I prices. The disturbance produced is often greatest farther out from the city. The excess of the Class I price over the blended price appears to offset the higher transportation cost for some distance outside of Zone I. Thus if the seasonal surplus in the peak month was 40 per cent, with the other conditions as outlined above in the illustration, the blended price of members for that month would be \$1.87. A non-member outside of Zone I who shipped no Class II milk during this month would thus get 13 cents more a hundredweight for what he shipped

than a member, and this could be conceived of as paying the extra freight from well beyond the Zone I boundary. Such conception, however, fails to recognize that the 13 cents and probably more is needed to offset the losses from refraining from extra production at the most favorable period, or the losses from separate sale of the seasonal surplus; but such misconceptions are prevalent among producers, not only among the non-members who are induced by the extra 13 cents (or less, down to zero at 252 miles out) to ship fluid milk, and their neighbor members of the co-operative, but even among association officers and managers. Moreover, occasional farmers just outside of Zone I may have a combination of factors of production—cattle, equipment, feed, and labor supply—which enables them to level out their production by seasons with little or no additional costs, and thus add further to the confusion.

No doubt, on the other hand, the dealers who are still fighting the co-operative in some markets have resorted to various forms of unfair practice such as local price cutting in some areas and price favors in others; and this action has been the most disturbing element of all.

Producers' associations have met the situation in various ways, no doubt short-sightedly in many cases. One practice has been to bring into the dealer agreements, by hook or by crook, as many as possible of the small independent dealers said to be causing the trouble; another to make other valuable concessions to dealers in return for exclusive contracts; another to bring as many as possible of the troublesome non-members into the association, making such concessions as are necessary.

These steps have enlarged the associations and given them control of a larger proportion of the market, which

is commonly considered a good policy on its own account. (As we shall see later, many members and officers of producer associations are monopolistically minded.) But they have also tended to extend the boundaries of the milkshed and to increase further the proportion of milk sold as Class II and Class III, thus still further widening the gap between the non-member single price and the member blended price.

In Chapter VI it was pointed out that the need for day-to-day reserves increases slightly the transportation differential between Class I and Class II prices. Seasonal variation adds a little more to this differential, at least in the season of slack production. It increases the differential the year round if the producers outside of *B* ship their output as fluid milk at all seasons. The amount of the effect even in the latter case is relatively small—for example, not more than 9 cents if milk were shipped from 40 miles farther out and the transportation rates assumed were those used in Chapter VI.

THE POOLING OF RETURNS BY CO-OPERATIVES

In practice, with co-operative associations, the use-price system of paying members for their milk is modified fundamentally by reason of the fact that almost invariably some of the dealers buying through the co-operative sell a larger percentage of their milk in Class I use than do others. This means that they sell their milk at a higher average price per hundredweight, and that the producers delivering to these dealers, if returns are figured according to individual dealers, will therefore receive higher prices than those delivering to other dealers. To prevent this, many co-operatives pool the returns from all dealers buy-

ing from or through them, paying each of the producers the same average price per hundredweight.⁴

This system of pooling returns needs to be carefully considered on its merits. Should all producers receive the same price regardless of the dealer to whom they deliver? If, before contracting with the association, a certain dealer has built up a clientele of producers with relatively uniform production, then changing to such a pooling system will surely be unfair to them. This will be true whether he builds up this clientele merely by selecting producers with more even production, or by offering inducements for more even production. So far as the dealer is concerned, if he has been paying properly for his milk, he will lose nothing by the change so far as prices are concerned. He will pay into the co-operative's pool, instead of directly to the producers, his extra net receipts arising from selling more than the average percentage of Class I milk. He will surely gain in saving the expense and trouble of looking after his sources of supply, particularly important in the slack seasons. On the other hand, his group of producers will have lost an outlet, and may have to join the association to secure another one readily. Yet for them to accept the pool price of the association obviously means surrendering all the gains they have made by evening out their production. Some can, in a few years, adjust their production back to a less uniform basis and prosper as much as

⁴ In case the dealers actually send out the checks to the producers, as commonly, they determine the amount by applying the average price per hundredweight computed by the co-operative to the hundredweights they have received from each producer. Amounts not thus paid out by the dealers with more than the average percentage of Class I sales are paid to the co-operatives and used to offset the deficits of the dealers with less than the average percentage of such sales.

before, but many of them cannot—they have special advantages for the more uniform type of dairy production.

Such a situation as just analyzed occurs frequently enough in the affairs of milk markets to warrant all the discussion given it. Nevertheless, it must be admitted that the great rank and file of members of many co-operatives approximate the average in the matter of seasonality of production, and likewise the dealers in the proportion of Class I sales. Most of those deviating from the average work constantly closer to it. In such situations, therefore, a pooling system tends to accomplish rough equity as between members, and to work acceptably, provided it is properly handled.

One of the common situations in which it does not work acceptably is where wide differences exist within the area as to seasonality of production, especially if these are based on natural differences. Take, for instance, a milkshed comprising at one extreme a somewhat distant mountainous pasture-farming area, and, at the other, nearer to market, a general diversified farming area with an abundance of corn and small grain. A single-price pooling system in such a milkshed would retard a tendency toward more uniform milk flow in the second area, and, in effect, subsidize the other area at its expense. A pooling system tends to break down in such a milkshed, and the co-operative with it. This happens especially when independent dealers, or even rival co-operatives, perhaps new ones that spring up, offer or provide premiums of one form or another to producers having the more even milk flow. This pulls away the very members who are most needed to keep seasonal surpluses down. In consequence, the pool price is reduced further relative to the outside price; and the

process goes on till the co-operative can no longer stand the strain.

A pooling plan also breaks down in some markets, especially the smaller ones, because transportation charges are not properly handled. A few associations go so far as to deduct an average transportation charge so that those near in to the city receive no higher net prices than those farther out. In more cases, the distributors control the hauling and employ an almost uniform system of charges for local trucking directly to market. These practices give such an advantage to the more distant producers—judging advantage in terms of comparison of prices received with those obtained by non-member neighbors—that the more distant non-members hasten to join the association. The near-in producers in turn are penalized, and either reduce their output, seek some other outlet, or become producer-distributors. As the proportion of milk from farther out increases, the average deduction for hauling charge increases.

Co-operatives frequently argue that difficulties of this sort arise because they do not have complete control of the milk supply; that if every farmer was a member, the prices received would be accepted because no outsiders would be on hand to make the disturbing offers to them. If true, this would of course be a strong argument against complete control, since it would mean that control was being used to support injustice; and to some extent it is true. But the effects entirely within the association may be as serious as those from the outside. Grant the more distant producers preferred transportation rates, for example, and they will ship more milk; also the boundary of the shed will expand unless means can be found to prevent. This

additional supply will increase the surplus, lower the pool price, and raise a protest from all over the milkshed, even from the favored areas. If the pooling system is equitably arranged, the difficulties from either the inside or the outside will not arise, and no need will arise for complete control.

THE BASE-RATING PLAN⁵

Associations confronted with the difficulty of compensating part of their members for their more regular seasonal production have increasingly adopted the base-rating plan, under which the individual member is paid one price, ordinarily the Class I price, for his "base" milk, and a lower price for the rest. The base assigned any member is intended to be his share of the Class I sales. This plan assumes that any member with absolutely uniform production has no "surplus," and is entitled to receive the Class I price for all of his milk. The amount of the "surplus" of other members is determined by taking the excess at other seasons over their low production of the fall and winter months;⁶ and for this surplus they receive a Class II or lower price.

It will be apparent that this plan yields returns to members on the basis of the uniformity of their production. Refined as suggested later, it serves as a device for extending back to the individual member the use-price system under which the dealers make their payments to the association. Strangely enough, it was invented as a scheme

⁵ Also called the base-and-surplus plan.

⁶ The measure of surplus most commonly taken is the excess over the production in three of the low months of the year—September, October, and November in many markets. Periods of four or five months are also sometimes used. The individual member's base rating is his average production in these low months. His actual deliveries may run, for example, from 80 per cent of this in October to 150 per cent in March to 200 per cent in June. All above the 100 per cent is individual excess over base.

for inducing members to even out their production and thus reduce the quantity of troublesome seasonal surplus coming to market. It is now recognized as primarily a method of paying more regular producers equitably for their surplus milk; of restoring to them the higher average annual prices which were taken away when pooling was adopted. It accomplishes its objective of evening out production, not by subsidizing such production but by paying what it is worth.⁷

It follows that the aim of the plan is to make the sum of the bases of the individual producers equal the Class I sales. Conceivably, with bases determined as indicated above, the percentages of base of all the members may in some months total to exactly the proportion between Class I and other uses reported by all the contracting dealers in the market. Thus in March the producers as a group may have delivered 150 per cent of their bases, and the fluid sales reported may be $66 \frac{2}{3}$ per cent of the dealers' total receipts. In this case, the producers on the average will receive for their base milk exactly the price agreed upon between dealers and co-operatives for Class I milk, except for adjustments for differences in butterfat, and less deductions for transportation, country receiving station charges, association fees, etc.

Invariably, however, the base ratings total more or less, commonly more, especially in recent years. The first reason for this is that, even in the low months, from 10 to 15 per cent of the milk is needed as reserve against daily

⁷ A form of base-rating plan was used in the Boston market in 1901-05. Another such plan was introduced in Baltimore in 1918 and has been used uninterruptedly there since. The Philadelphia association adopted a base-rating system in 1919. When the Adjustment Act went into effect, such plans were in operation in 26 markets and have since been introduced into licenses in most of these cities and in 8 new ones.

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fluctuations, and this is commonly paid for on a Class II basis. In many markets, some milk in addition to the daily reserve supply is made into cream or factory products, the amount varying from month to month according to the extent to which production exceeds sales. The percentages in the first column of the accompanying table vary according to the milk flow, which varies from month to month in

RELATION BETWEEN BASE RATINGS, RECEIPTS, AND SALES
*(All figures are percentages)

Month	Producers' Deliveries of Their Bases	Dealers' Receipts of Sales	Receipts Receiving Class I Price
January.....	124	137	77
February.....	131	144	69
March.....	140	153	65
April.....	152	164	61
May.....	175	185	54
June.....	198	206	49
July.....	176	189	53
August.....	135	156	64
September.....	105	120	83
October.....	96	109	92
November.....	112	125	80
December.....	118	133	75

any year and for the same months in succeeding years. The bases have been determined in an earlier year, and in this year the production of the three base months is assumed to average about 4 per cent above that of the base year. The percentages in the second column vary with the volume of fluid milk sales as well as with the milk flow, while those in the third column are reciprocals of the second column. Thus, if receipts are 125 per cent of sales, as in November, then sales are 80 per cent of receipts. For the three base months the deliveries exceed sales by an average of 18 per cent. In the assumed case, therefore, the

ratings determined on the production of the three low months of the preceding or some recent year give individual base totals averaging fairly close to the proportion of Class I sales in the base months, if we make allowance for necessary daily reserves. Occasionally, as a result of retaining earlier bases after consumption has increased or production decreased, the individual base ratings will average more than 100 per cent of the fluid sales in some one month or two.

On the basis of such a set-up as outlined in the table, the dealers would pay the co-operative the Class I price for 80 per cent of the milk received during the month of November, and the Class II price for the remainder. Assuming a Class I price of \$2.00 per hundredweight and a Class II price of \$1.40, the producers would receive in November an average or blended price of \$1.88 per hundredweight. At the same prices, the producers would get the Class I price for only 49 per cent of their actual deliveries in June, and a blended price of only \$1.69 per hundredweight. These prices are before transportation and other charges are deducted.

In terms of base ratings, the 49 per cent of receipts sold for Class I use in June equalled about 96 per cent of the average bases of the producers. On the average, therefore, the producers got \$2.00 per hundredweight for that percentage of their bases and \$1.40 for the rest of their base milk, as well as for all of the excess over base.

The distribution of the returns among producers with varying bases can be determined in several ways. A simple one is to pay each of them the Class I price on 96 per cent of his base, and a Class II price for his excess over his base. The resulting payment will be high for those with high seasonal variation and low bases, and low for the opposite.

For reasons that will appear later, the method commonly outlined in the present licenses calls for figuring first the payments due each producer for his Class II and Class III milk and then prorating the remainder according to individual base ratings.

Whichever method is used, any group of members with nearly even production and base ratings close to their average production will receive high average or blended prices, and a pasture farming group, with low bases, will receive clearly lower average returns. Thus, by means of a system of base ratings, returns are adjusted between parts of the milkshed having different degrees of seasonality of production.

EQUALIZATION OF RETURNS

The base-rating plan, however, does not fully take the place of the pooling method in the matter of equalizing returns. It will provide rates of return to individual producers delivering to the same dealers that vary according to the seasonality of their production, but it will not take care of differences between dealers in the ratio of their Class I sales to the bases of their producers. Thus, one dealer in a certain month may find himself receiving the milk of producers whose bases total 500,000 pounds and actually selling 400,000 pounds of fluid milk. A competitor whose producers have bases totalling 500,000 pounds may actually sell 600,000 pounds as fluid milk. According to the analysis above, and assuming Class I sales exactly equal to the total of producers' bases, the first dealer will pay his producers Class I prices for 80 per cent of the bases, whereas the second will pay his producers Class I prices for 120 per cent of their bases. Thus, the second group are

better paid than the first because of delivering to another dealer.

One can see at once that such a situation would not make for peace and contentment within producer associations. The associations have been able to handle it with fair satisfaction under ordinary circumstances merely by giving each dealer a group of producers whose bases were in about the usual or average relation to Class I sales within the association. Occasionally, however, the shifts needed to keep returns about equal could not be arranged and returns have become seriously out of line.

This difficulty with the base-rating plan also came to the fore in the few situations in which two or more co-operative associations or dealers in the same milkshed were using the base-rating plan, and had sales outlets representing different ratios of Class I sales to bases.⁸ It became a burning issue the moment the AAA set out to put all the producers, both non-members and members, upon a base-rating plan under a marketing agreement or license. Among the dealers involved were many whose Class I sales were certain to exceed the bases given their producers, and others in the position of having fluid milk sales less than the bases of their producers. As soon as some producers discovered that they were getting Class I prices for a lower percentage of their bases than were other producers, they wanted to shift to the dealers able to offer higher percentages. Such a shift greatly disturbed the existing relations between dealers and producers and even between the co-operatives and their members.

Some of the co-operatives had been working at this

⁸ The problem had arisen acutely in the Boston milkshed and plans had been discussed for "equalization of sales."

problem along the lines of assembling in an "equalization fund" the returns from excess of Class I sales over bases of some of their contracting dealers and distributing this fund among their dealers with Class I sales less than their producers' bases. This was the general type of plan provided in most of the early marketing agreements, and it has been continued in the licenses.

The plan of equalization of returns now being provided in federal milk licenses operates as follows: the Class II price is paid uniformly by all dealers to all producers on all milk in excess of the delivered bases.⁹ From the total receipts from all Class I and Class II sales, by all dealers combined, is subtracted the total of all the payments on the excess over delivered bases, and the difference is prorated among all producers in the market uniformly according to their delivered bases. This is done by reducing it to a rate per hundred of delivered bases which is applied to each producer's delivered base to determine his individual payment on his milk.

It will be apparent that this system requires any dealer whose Class I sales are considerably less than the delivered bases of his producers to pay out more to his producers than he receives from his Class I and Class II sales; and the dealer with Class I sales considerably in excess of the base of his producers, to pay out less than his receipts from sales. Dealers of the second type pay their excess receipts into an equalization fund, out of which the others are reimbursed for their excess payments to producers. The

⁹ A distinction has to be made between the actual base and delivered base, since usually, especially in the fall months, some of the producers do not deliver the full amount of their rating. Accordingly, the total delivered base usually is a little less than the total of allotted bases. Obviously, it never can be more. Were it not for these deficiencies in deliveries, the prorating could be done simply by reducing the receipts from Class I sales to a rate per hundredweight of producers' bases, as explained above.

dividing line between the two groups is the average ratio of Class I sales to delivered base. An equalization account is kept in which each dealer is debited for the amount of his receipts from sales, and credited with his payments to producers, the difference being adjusted by payments into or receipts from the equalization fund. Amounts received from the fund are distributed among the producers who supply this dealer. They are believed to be entitled to these extra returns as a recompense for having had less than their proportionate shares in the Class I sales, the base ratings being assumed to indicate what those shares should be.¹⁰

This system presumes to make it a matter of indifference to a dealer whether or not his Class I sales exceed his delivered base. In one case he pays too much out for his milk and gets recompensed exactly in return; in the other, he pays too little and has to contribute the identical amount to the equalization fund. In practice, however, most dealers would rather pay good prices to producers and get recompensed afterward than the contrary. They prefer paying their money to producers rather than into an equalization fund. They therefore like high-base producers better than low-base producers, and will go out to find them. This may develop in some markets, unless controlled, into a scramble between rival co-operatives for high-base producers and even into giving some producers too high bases in order to obtain their membership.

It should also be pointed out that much of the demand for equalization of returns is not well founded. The rival co-operatives in an area may have varying proportions of Class I sales and pay their members appreciably differing

¹⁰ In markets where the base ratings include both Class I and Class II sales, the excess over the delivered bases is paid the Class III price and the rate per hundredweight of delivered base is a blend of the Class I and Class II prices.

pool or blended prices. Strife and rivalry may arise between them as a result, even though there is nothing awry about the payments. The producers selling to an independent dealer, or the members of a small co-operative, may all reside within the inner zone of the milkshed and be entitled to larger Class I sales than the average for the members of a large co-operative scattered all over the milkshed.¹¹ Or the group in question may have more nearly leveled out its production between seasons, and likewise be entitled to a larger proportion of Class I sales. Only if the members of one group have a larger proportion of Class I sales than do members of another group living at the same distance from market and having the same seasonal distribution and, for these reasons, having the same base ratings, is there necessarily any inequity in the situation.¹² In practice, no doubt many independent dealers pay less than they should for a largely leveled out supply, or for only such part of their producers' milk as they need.

The agreements and licenses set up in various markets have commonly accepted the base ratings already in use by the large co-operatives in the territory and have attempted to put the non-members and other outside groups upon a comparable basis. This has resulted in friction in many cases. In some markets, the outside groups have

¹¹ For elaboration of this statement, see "Nearby vs. Distant Producers," pp. 211-19 below.

¹² It should also be pointed out that relatively few persons in any milkshed really understand the basis of equalization of returns. They conceive of equalization as needed merely because some dealers have a larger ratio than others of Class I sales to receipts. The discussion above should have made it clear that some dealers may very properly have higher ratios of Class I sales to receipts, since they buy from producers entitled to higher bases and should in consequence pay more for their milk. Equalization of returns is needed *not because of differences in ratios of Class I sales to receipts, but because of differences in ratios of Class I sales to producers' bases.*

joined forces with the discontents in the association, making a group large enough to threaten the marketing agreement seriously and perhaps even the life of the co-operative. To meet this situation, it has been necessary for the AAA in several cases to assume responsibility for all base ratings in the milkshed. In the Boston market, each group is allowed to handle its own ratings within its group, the AAA concerning itself only with the division of the bases between different co-operatives, and non-members and members. However, in order to make such a division, it has commonly been necessary to determine a base for each individual member and non-member. The total base of the co-operatives is the sum of the individual bases of its members so determined. The base ratings determined by the AAA and those of the associations differ widely in many individual cases.

As explained below, the ratings determined by the AAA tend to be based too much on seasonal differences and not enough upon distance from market. Yet in spite of this, they are better than the association ratings in several markets where comparisons can be made. Some associations have made many special arrangements as to ratings to meet particular conditions, especially to meet competition with independent dealers or other co-operatives. All these special arrangements are fester-spots in the bodies of the co-operatives. These statements must not be interpreted as indicating a need for a rigid inflexible system of determining base ratings. When a market goes into a base-rating plan for the first time, any special conditions in any part of the territory must be taken into account. Using the deliveries of one year only may prove unjust to many individuals. A wide base period—perhaps the whole year—may prove more equitable than a narrow one for

the first year in such a situation. If part of the producers have been operating under a base-rating plan and part not, one must recognize that the first group has already had time to build up its base period production.

EFFECT OF THE BASE-RATING PLAN UPON PRODUCTION

As one would expect from the foregoing analysis, the application of the base-rating plan in a milkshed has generally caused relatively more milk to be produced in the fall and winter. A comparison which the Dairy Section has made between seasonal movements in milk receipts by years from 1920 to 1932 in Baltimore and Philadelphia (operating on the base-rating plan) and Minneapolis-St. Paul (operating without it), indicates a definite narrowing of the seasonal range in the first two markets, and no sustained narrowing in the third. The narrowing ceased after a few years in the Baltimore area, but is still in progress in the Philadelphia area.¹³

In no market where the base-rating plan has been introduced has anything like complete leveling out been attained—the disadvantages of entirely even production are too great—but highly significant shifts have been produced. These have not, of course, been accompanied by any increase in income from Class I sales—unless per chance consumption has expanded at the same time; but relatively more of the income has gone to those who have pushed up their ratings and relatively less to the others. In keeping with the foregoing, the area from which milk is needed only part of the year has contracted at both its inner and outer boundaries, except where expansion of consumption has offset this effect. Another effect not so much

¹³ *Dairy Memorandum No. 1*, Mar. 22, 1935, Pt. VI.

anticipated is that total production has commonly been increased. The extra cows taken on in building up base ratings have been kept in production in other months. The fall freshened cows have produced more milk in a year than the spring freshened cows. This effect has called for a further contraction of the fluid milk zone. The co-operative has found these contractions difficult to make, and so the final result has been an increase in the excess over base already present in most markets.

In some cases another effect of the plan has been to shift the low production into months not in the base period, making necessary a widening of this period to include another month or two. In a few cases, five or six months are now being used. In certain instances, yearly averages have been used as bases, at least temporarily. Such bases will also discourage high seasonal peaks in production, since these produce low blended prices. However, by keeping somewhat above the average, and in particular by not going below it, any producer can build up a higher base rating for the year following; hence this type of base determination stimulates total production also.

This raises the question of year-to-year revision of bases. Clearly such revisions, regardless of the base period, can scarcely avoid increasing the bases and expanding total production at the same time. The problem is the same one that has confronted all proposals for the granting of individual allotments to producers. The only way to keep such plans from stimulating production is to fix such allotments definitely. Yet this inflexibility is unfair to many producers and discourages improvements in feeding and breeding. Opportunity must also be kept open for new producers to enter the dairy industry. Many co-

operatives have refused to change bases during the declining consumption of the last few years.¹⁴ But such a volume of protest has arisen that base-rating systems are now under revision in several markets.

Some of the early marketing agreements, and indeed the proposed model "National Milk Marketing Agreement for Milk" mentioned earlier, had a provision requiring any new producer to obtain a "certificate of necessity" before he could ship milk to market. Such an arrangement would have checked one source of additions to surplus; but not that due to expansion of production of established producers. The probation arrangement in more general use in 1934, which required each producer to sell his fluid milk at Class II prices during an initial period of several months, was intended primarily to keep producers from shifting in and out of the fluid milk market. Its most serious effect is probably to make it hard to get a producer out of the market when he is no longer needed in it—having sacrificed once to get in, he will insist upon remaining there.

The amendments of last autumn opening up markets to new producers, while still maintaining monopoly Class I prices, could have no other effect than to bring in outlying producers whose milk was needed only during the months of feed shortage, thus laying the foundation for a still greater excess of milk over Class I needs and hence lowering blended prices later.

Strangely enough, perhaps, some producers' association officers looked favorably at the time upon the opening up of bases to new producers. They saw in it a way of getting

¹⁴ Producer association managers point out that production has been kept down in many markets in recent years by refusal of bases to new shippers and in various related ways mentioned below.

under their control the milk which had been causing them trouble when distributed by non-contracting dealers. No doubt a general theory held by many such officials—that their market will never be stabilized at the desired price level until they get control of all the milk and force the dealers to buy from them—was responsible for their attitude in this matter. They should have recognized, however, that the lower the blended price of the members became, the greater the advantage the non-members would have in staying out of the association. Obviously they created a situation which it will be difficult for them to handle later. One way out, theoretically, will be to take bases away from part of the producers when developments have proved conclusively that their milk is not needed at any time in the market. Practically, however, this solution will be impossible until Class I prices are deprived of their monopoly element; and it will be difficult even then because producers will always hope for a return of monopoly prices.

INCLUDING CREAM IN THE BASE RATINGS

Expansion of production has been checked by the AAA in the case of cotton, wheat, corn and hogs, and tobacco by giving the producer a quota representing his total production. Why not give the milk producer a base representing his combined production of all classes of milk? While this proposal has been discussed to some extent, the furthest that it has gone is the inclusion of Class II along with Class I milk in the base-rating plans of several markets. In other markets, the co-operative has so enlarged the bases of its members that the Class I sales each month are so far below the total of bases that the Class II sales are entirely covered by the difference. For

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one co-operative last autumn the Class I sales averaged only 42 per cent of the bases.

It is not the plan of including cream in the base ratings, but the manner of its adoption, that causes trouble. The co-operative's reason for adopting it is likely to be to get cream production under control along with milk production, this being considered necessary because cream is being bought by independent dealers and stores at less than the Class II price. This commonly suggests that the Class II price is too far above the Class III price; and that the co-operative is trying to escape lowering it by getting the cream supply under control. Such a move can have no other effect than dividing the Class I market between a larger number of producers, and hence lowering the blended price and producing dissatisfaction among the existing members. They can be told that this is necessary to preserve their Class II price, but they are primarily interested in selling Class I milk.

CHAPTER VIII

OPERATING PROBLEMS OF FLUID MILK MARKETS

The application to actual milk markets of the operating plans described in the last chapter quickly brings to the fore a multitude of special problems requiring amplification of the plans. Also in the actual practice of using the plans, certain questionable procedures may develop. The most outstanding of these latter relates to the allocation of base ratings between the nearby and more distant producers. Space permits only a brief consideration of several of the problems.

NEARBY VERSUS MORE DISTANT PRODUCERS

The movement to establish a milk producer association has commonly been initiated by dairy farmers living near to the market. These farmers usually have a sense of property right in their local market, and they organize in large part to protect this right against milk brought in by dealers from outlying areas for short periods to defeat the local demand for better prices. On the other hand, the dealers cannot afford to buy outside milk regularly because of the longer haul involved; but they can buy it long enough to worst the near-in producers who ordinarily have no other outlet. The dealers may continue this practice after the association is formed. If so, the association is likely to meet it by making these outlying producers members, even though their milk may not really be needed. If the base-rating plan is adopted, the outlying producers commonly receive ratings on the same basis as the near-in

producers; thus two producers with the same seasonal production, one living within ten miles of the city and another a hundred miles out, may be given identical bases.

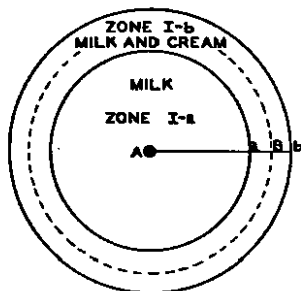
Experience proves, first of all, that the giving of any bases at all to producers whose milk is not needed at any season is a serious misuse of the base-rating plan, and leads to serious internal dissensions.¹ Every new outlying producer thus added reduces the percentage of base for which the existing producers receive Class I prices. As explained in Chapter VI, such expansion of the milkshed also tends to follow later attempts to raise Class I prices too far above the level of Class II prices, and to accompany certain abuses of the pooling system that favor the outlying producers.

It is also an abuse of the rating plan to give the same base ratings to nearby as to more distant producers, even though the milk of all is needed at some seasons. This statement will not be accepted by all, at least until after some explanation; and perhaps not then. The explanation requires that we go back to the situation before the co-operative was organized, and before some milk dealers began to bring in outlying milk to defeat the price demands of the nearby producers. In this situation the nearby dairymen were generally able to sell all their milk at fluid milk prices the year round even though their production was somewhat irregular, and the dealers went outside only for the extra milk which they needed when the nearby supply was running low. Thus there tended to be a group of nearby producers in Zone I-a in the diagram on page 213 who sold all their milk at all seasons at fluid milk prices; and another group farther out, in Zone I-b in the diagram, who sold their milk at fluid milk prices only

¹ Some allowance may be necessary for irregularities from year to year also.

part of the year. The nearer to markets these latter lived, the more of the time they shipped fluid milk to the city. Dealers did not buy in Zone I-b except when necessary because of the higher cost of transporting milk from a greater distance. (Point *B* in the diagram and the broken circle indicate the boundaries of Zone I of the diagrams in

MILK SUPPLY ZONES AS AFFECTED BY SEASONAL VARIATIONS IN MILK FLOW



Chapter VI, which are drawn on the assumption of no seasonal variations in supply.) Under the conditions described, the boundaries of milksheds tended to expand and contract in much this way.² They still do in a considerable measure in many markets, especially in the smaller ones. In some rather large markets west of the Alleghenies, certain processing plants still supply fluid milk for nearby cities only part of the year.

The imposition of additional sanitation requirements, making it necessary for producers in Zone I-b as well as Zone I-a to meet inspection requirements, affects this situation fundamentally only in one way; namely, that it makes the dealers pay enough more for the milk bought in Zone I-b to compensate these producers for maintaining

² Attention is called to the free use of the terms *tendency* and *tended* in this discussion. The actual practice was likely to be mixed in various ways.

herds and equipment that meet inspection. This changes somewhat the differentials between the two zones since producers in both must meet the same inspection, and since the fixed costs involved are distributed over a shorter period in Zone I-b. In effect, it brings within Zone I-a a fringe of producers from just outside, these being the producers who can lower their sanitation costs per hundredweight by shipping twelve months instead of less, by more than enough to offset the transportation costs.³ In practice, however, many of the producers in I-b who have equipped their farms to meet inspection and have learned the habit of producing good milk, have wanted to ship milk the year round and have been inclined to ignore the special day-to-day costs involved, and the dealers have been always ready to take advantage of such opportunities. As a result the imposition of sanitation requirements has in effect furnished an additional incentive to the nearby producers to organize a co-operative.⁴

The co-operative which is set up in such a situation needs merely as a matter of good management to work out a plan of payment for milk that restores, in large measure if not altogether, the price relationships that existed before the dealers began using outside milk as a temporary club to beat down prices of nearby milk. Such restoration would produce a price pattern like that indicated by the diagram on page 160, modified to include Zones I-a and I-b. Instead, most of the co-operatives have been mainly concerned with

³ Thus if fixed sanitation costs were 12 cents per hundredweight for a producer eight miles beyond the boundary of I-a, shipping milk ten months of the year, the sanitation costs would be lowered one cent per hundredweight, exactly equalling his transportation cost of one-fourth of a cent per mile as assumed in Chap. VI, if he shipped twelve months of the year.

⁴ The need for providing a day-to-day reserve supply of milk in Zones I-a and I-b is a further complication, but it does not affect the analysis in any important particular.

the level of the general price negotiated with the dealers, and have not troubled to adjust returns carefully as between members. In fact, in the smaller markets, a simple pool has usually been set up in which nearby and outlying producers have shared equally in the seasonal surplus. If part of the nearby producers have not received as much as before, as has actually happened at times, in spite of a general price increase obtained, they have been comforted with the thought that a further price increase would presently be obtained. But the usual outcome has been an increasing amount of outlying milk to shut out competing sources of supply, and still greater sharing of the surplus. Base-rating systems can be worked out in such a way as to differentiate equitably between near and distant producers; but seldom has this been done.

In allocating returns to producers in a milkshed, it now appears that three principles of differentiation are involved which must in some way be reconciled in application. One is the zoning or distance principle just discussed, which gives first position in the fluid milk market to the nearby producers, and position to others in proportion to distance and according to the varying needs of the market for their milk. The second is the seasonal differential principle discussed in the last chapter, which gives higher average returns to the producer with the more regular milk supply, since he is furnishing a higher proportion of his milk in the seasons when prices are normally higher. The third principle recognizes the fixed nature of part of the costs involved in producing acceptable fluid milk, and the need for compensating a producer for this factor, even though his milk may not be needed at all seasons.

The base-rating plan can be made to fit all three of these principles. An extreme form of meeting the first principle

would consist of leaving the producers in Zone I-a out of the rating plan, accepting all their milk at Class I prices except that needed for daily reserves, and giving bases in Zone I-b in the form of percentages of average production declining outward from the market. This would, however, fail to recognize adequately that seasonal regularity has economic value in the market within I-a as well as within I-b. Some compromise of this fact with the seasonal principle therefore seems necessary and is surely feasible. This may take the form of decreasing the percentages of the base period production outward beginning at the market, or perhaps 10 or 15 miles out, in determining the individual producer ratings. At the outer boundary of I-b these percentages need to be just high enough to induce a sufficient number of producers to meet the sanitation standards—in a period of expanding consumption to bring them into the market; in a stationary period, to keep them in but to attract no new ones.

The principal plan in present use for recognizing the distance principle is that of laying out the milkshed in zones from the city outward and giving those in the inner zones relatively higher bases, or Class I prices higher by more than the transportation differential. Also in some of the milk markets under license, the nearby producers are given somewhat higher bases. There has been, however, no clear recognition of the principles involved, and hence no real solution of the problem. Instead the price zones have been set up, or the special ratings granted, because the nearby producers have forced the issue by breaking away from the associations and making special arrangements with dealers that restored to them in part at least a return for their advantage of location. There has also been a tendency for small rival co-operatives to spring

up in the nearby territory as well as farther out. The extent of the competition from non-members and independent dealers, the extent to which special sources of supply are drawn upon in the fall and winter, and the location of these sources, whether near to market or well out in Zone I-b, will be important immediate considerations in adjusting ratings to distance from market. Over a period of years the objective should be a systematic rating plan aimed at securing the most economical distribution of production within the milkshed.

The zone system, especially if the differentials between zones are in terms of base ratings, closely approximates a systematic treatment of the problem. Another such treatment would be to give the producers in Zone I-a ratings equal to say 85 per cent of their average monthly production (the 15 per cent being for reserves against daily fluctuations); the producers at the outer edge of I-b ratings equal to 50 per cent of their low-month production (this 50 per cent being estimated as compensation for keeping herd and equipment ready for inspection);⁵ and the producers between, various combinations of intermediate percentages of average and low-month production. Thus producers half-way out in Zone I-b might be given bases equal to 35 per cent of their average production plus 35 per cent of their low-month production. Of course, the differentials according to distance could also be handled as a discount from transportation charges, this becoming more nearer the city. This advantage of location, after all, really varies according to transportation costs.

The method to be followed in any market will depend upon the special conditions prevailing. If some producers well out in Zone I-a have a considerable range in seasonal

⁵ The percentages needed would have to be determined by experience.

production, establishing ratings on low-month production but varying the percentages with distance might be preferable. In other situations, shading off the percentages clear from the market outward, ignoring the distinction between Zones I-a and I-b, might work most satisfactorily. Producers whose shipments are nearly uniform throughout the year obtain about the same bases whether they are figured on average or low-month production. Those not fitting into this description are penalized by any system that uses low-month production as a base either in whole or in part within Zone I-a or beyond.

The foregoing statement needs to be somewhat modified with arbitrarily high differentials between Class I and Class II prices. The increased supply of surplus milk thus attracted lowers the blended price, but not as much at the outset as the monopoly premium. As long as a net gain remains, the I-a producers share in it and can properly be asked to take some decrease in their ratings along with those in I-b; but not after their net gain vanishes. In practice, also, the new shippers from outside I-b frequently will not give up selling to independent dealers unless given more favorable ratings than those of their neighbors just inside. Once these new shippers get this favorable rating, those just inside the old boundary demand higher ratings. After a very short time indeed, supplies of fluid milk are expanded to a point where the nearby producers are robbed of much if not all of their natural advantage of location.

Thus does a co-operative movement undertaken to preserve the interest of the nearby producers in their market eventuate in a scheme of prorating returns to members that takes away from them what they set out to get. It must be said, however, that with the co-operative well established, they can get higher returns as non-members

than they were able to obtain before; but they must become non-members in order to get these returns. An important reason for this outcome is of course that the outlying producers are always the more numerous and outvote the near-in producers on matters of policy.

Obviously a price policy which underpays the near-in producer and overpays the outlying producer has the effect of thinning out production near the market and hence of spreading out the milkshed, when concentration of production near the market is highly to be desired from all points of view. Accordingly, a shift toward more equitable ratings is certain to be followed by expansion of near-in production, which in turn will call for further enlargement of the bases in this territory.

THE PRODUCER-DISTRIBUTOR PROBLEM

The co-operatives and dealers in nearly all markets have always had to compete with the producer who distributes his own milk. Compulsory pasteurization has been an effective weapon against them; but it is rapidly losing its efficacy because of the recent developments in small-unit pasteurizing machinery, and the disseminating of knowledge of how to produce and care for good milk. Today many of the producer-distributors are among the most skilled dairymen in their communities. Intensive dairy farming also lends itself to a rather large scale of production. Since 1930, as explained in Chapter III, milk prices and wages have been such as to bring out many new producer-distributors.

The early marketing agreements generally attempted to put the producer-distributors into equalization schemes that failed to allow adequately for any regularity in their production or for their location near the city. A vigorous

and proper protest followed, and large numbers have not yet made any payments into the equalization funds. Any producer-distributor who has leveled out his production to meet the demands of his customers cannot properly be asked to pay into an equalization fund, and this fact is now coming to be accepted.

The case is not so simple for producer-distributors who have a seasonal surplus or deficit. On the principle of proximity to markets it may be affirmed that they have a right to Class I prices for whatever they produce at any time. Upon the seasonal principle they can be asked either to level out their production or to equalize returns on any seasonal surplus milk of their own producing or on any milk they buy which they sell at Class I prices. Some compromise between these two applications is likely to be most equitable. It might take the form of exempting them from equalization on everything up to their average production for the year. This would make it impossible for a producer-distributor to gain during the first year by expanding his Class I sales or production, since all sales above the delivered base would be equalized, and all new production would be allowed only the Class II or Class III price. Any increase in sales or production during the year or base period would, however, help him to build up his base for the year following. This plan would therefore serve as a partial check on expansion. The present policy in federal milk licenses is in keeping with this analysis.

Dealers in these markets, and likewise producer associations, generally refuse to take such a liberal attitude toward producer-distributors. They look upon them as a group that stands in the way of their raising prices to

proper levels. If the objective in milk marketing organization is solely that of raising prices, the position is well taken; but such an objective is valid only for the duration of the emergency, and any arrangement developed to support such an emergency objective must be abandoned when the emergency is over. Proposals to give producer-distributors fixed bases to prevent their further expansion of sales should be scrutinized carefully. In ordinary times any such expansion fairly attained is socially desirable and should not be checked, even though it may have been stimulated by raising Class I prices in a license.

TRANSPORTATION PROBLEMS

The evil effects of the system of pooling transportation costs followed in many smaller milksheds should now be apparent. Nothing could be devised better calculated to draw additional milk from outlying producers, to increase the excess over Class I sales, and to lower the blended price to producers. The same general effect is achieved in many larger markets by a system of hauling charges that favors the outlying producers. If private operators do the trucking, they are interested in getting a full load without traveling too far for it. They tend in general to contract additional milk from farther out at about the same rates as milk near to the market. To any one of them, it is a matter of indifference whether he travels 60 miles radially outward from a market and back, or the same distance circumferentially in large measure. Thus producers 30 miles out may get as good rates as those 15 miles out. When the trucking is done by the distributors, or controlled by them, the system of charges tends to approximate the same results. Co-operatives have been able to straighten out this

situation in some markets, but have commonly met strong resistance from non-members and some of the dealers and truckers.

The question constantly arises as to whether dealers or producers should enjoy the benefit from reduced costs in case milk is shipped in glass-lined tank cars. Since the dealers usually take the initiative in the matter, they usually assume that the savings belong to them. This, however, is only in part true, and presumably there needs to be some sharing of savings. In many situations a reason for this sharing is that only longer hauls to local receiving plants, at the expense of the producers, make tank-car volume possible.

When not needed as a daily reserve against fluctuations, excess milk transported to a city represents a serious economic waste. If the cost of transporting it as milk is charged against the outlying producers and they are paid Class II or Class III prices for it, their net returns may be very low. Yet this is the system followed in many markets. In territory where no other outlets are available, frequently in the East and South, the producers may keep their Class II and Class III milk at home or make it into butter or even feed it to calves. This is one of the ways in which milk receipts are leveled out seasonally. It also tends to keep more outlying producers from shipping milk.

In other markets, milk later converted into cream is charged only cream transportation charges. In this case, the whole producer group stands the loss on its transportation, and shipping by outlying producers is somewhat subsidized.

SURPLUS DISPOSAL PLANTS

Surplus disposal plants located in outer reaches of a milkshed may help solve many difficult problems of base

ratings, equalization of returns, and adjustment of transportation charges. But a producer association or a dealer can scarcely afford to operate such plants only part of the year. They must have enough volume for economical operation after the city is supplied with fresh milk during the slack season. One or two large plants located near the outer edge of the milkshed in a region of intense dairy farming will take care of the situation for any middle-sized city; but a system of plants forming more or less of a ring around the milkshed, as in the Twin Cities market area, has much to be said in its favor. Locating such plants within the city itself affords little or no savings in transportation costs, but may be advantageous in very small markets.

Some co-operatives maintain such plants in large markets merely as a means of handling the excess milk of their members instead of letting the distributors do so. If this enables the distributors to dispense entirely with all processing except pasteurization, it may well offer some of the usual advantages of large-scale unified operation. In practice, such plants are likely to duplicate existing facilities, and their record of accomplishment is spotted.

Operating surplus disposal plants always raises issues of allocation of base ratings and equalization of returns. If Class I prices are kept in competitive relation to Class II and Class III prices, as they have nearly always been in the Twin Cities market, the *net* prices received by producers delivering to a country creamery, a cheese factory, or a condensery operated by the co-operative should be better than the net prices these members would get if they shipped milk to the city and paid transportation costs. They will not be as good as the net prices obtained by near-in producers shipping milk; but there is no way that they can

honestly be made as good because of the difference in location. The members of the Twin Cities Association rather generally understand this situation; but in other milksheds those delivering to the surplus plants are likely to have certain delusions about the superiority of Class I prices, and their right to share in them, which trace to a widely held conception of co-operatives as set up for the purpose of getting monopoly Class I prices. Where such monopoly prices do prevail, the outlying members may indeed be warranted in their contentions. But maintaining a system of surplus plants is almost incompatible with monopoly milk prices. Finally, arranging bases between producers in such a way as to distinguish between them according to distance from market, as explained above, will entirely take care of this problem.

BASE RATINGS OF CREAM SHIPPERS

The sudden institution of base ratings and equalization plans in milk markets produced many disruptions in established methods of operation. Some of these disruptions were the results of mistakes in the arrangements hastily laid down in the licenses. An excellent example is the denial of ratings to cream shippers in some of the Eastern markets where they really are reserve sources of supply for fresh milk and may be called upon to supply milk instead of cream for a few weeks in occasional years. No doubt some of these should have been allowed to continue shipping cream except when milk was needed instead, and should have been given base ratings of the sort appropriate for producers on the outer rim of the milkshed.

A more serious disturbance arose from the application of the equalization plan to the situation. Dealers with a

good many such cream shippers commonly found themselves with low total producers' bases in proportion to their Class I sales, and hence with payments due the equalization fund. By converting cream shippers into milk shippers the dealers have been able to secure base ratings for them and thus greatly reduce if not entirely eliminate their payments into the equalization fund. Not only has an economic loss from useless hauling of milk ensued, but the dairymen have been obliged to change the whole organization of their farm enterprises since they no longer have skim milk with which to rear heifers for replacements on their own farms or those of neighboring dairy areas. Systems of base ratings including Class I and Class II milk as now being developed do not meet this situation.

THE OPERATING CO-OPERATIVE

This term is commonly used to designate the producer associations which distribute the milk of their members. Such enterprise has increased a little since 1930, partly because of the distorted price and wage relations since then, and partly because state control activities have stimulated a good deal of new organization activity which has mostly taken the form of small, loosely set up organizations within milksheds already organized. Some of these organizations have stressed distributing milk instead of merely bargaining for its sale.

The conventional point of view among experienced producer association managers is that the distributing co-operative has a small place in the sun. In most milk markets, any one distributor has great difficulty in expanding his business beyond a third, or at most a half of the market. A co-operative would encounter the same difficulty—in fact the Cincinnati producers' association has

already encountered it. Most association officials consider the control of 90 per cent or more of the milk in a market far more important than any gains they might make from distributing the milk of one-third of the producers.

This line of reasoning, however, does not suffice for all situations. There are groups of producers in some market areas who because of the type and quality of their product or of their particular location within the milkshed, or because of deficiencies in the plan of operation of existing co-operatives, can benefit themselves by organizing to distribute their own milk, if they can obtain competent management. Experience thus far indicates, however, that a majority of them will either fail, or just manage to survive, for lack of able personnel.

To the large associations seeking for unified control of a market, the presence of these small operating co-operatives is likely to prove annoying; but the milkshed and the market may nevertheless be the better for having them. But whether they are a force for good or evil in a market, they constitute a problem for any price control agency—a problem that has much in common with that of the producer-distributor. The principal difficulty is that such organizations are in a position to undersell in the wholesale and retail market and to pass these lower prices on to their members in lower prices—their members being willing to accept lower prices in order to increase the proportion of fluid milk sales, at least for the time being. They may, on the other hand, sell at the regular prices but return higher prices to their producers as a result of more efficient handling and distribution. One cannot logically object to such a development; but nevertheless it proves irritating to the big producer associations and contracting dealers. The operating co-operatives may also both under-

sell and make higher returns under such circumstances. Here again no legitimate objection can be raised so long as one accepts the general principles upon which modern competitive economic society is based; but those who believe in fixed uniform prices in place of competition can logically object.

Under most of the present base-rating and equalization plans, operating co-operatives may increase their production in the base period and hence their rating for the following year, and if they can increase their Class I sales in proportion their equalization payments will not be affected. They thus have the possibility of increasing their importance in the market just as have producer-distributors, and if resale prices are not fixed they may be tempted to cut prices in order to expand their outlet. The large producer association is likely to ask for fixed bases for the operating co-operatives under such circumstances; or some other equally restrictive device. The solution of this problem depends entirely upon the assumptions and objective. Restrictions may be warranted if the objective is the emergency one of raising prices of fluid milk toward parity, without regard to prices of competing dairy products, or if it is assumed that competing for business by lowering prices is undesirable even in normal times; but not otherwise.

BUTTERFAT DIFFERENTIALS

Producer price schedules need to provide for differences in the percentage of butterfat in milk delivered, ordinarily expressed as above or below a standard such as 3.7 per cent. At 30 cents per pound of butter, one-tenth of a per cent (equal to one-tenth of a pound in a hundredweight) of butterfat in milk is worth a little over 3 cents for butter-

making purposes. Its value in cream would be a trifle more than in butter. The majority of the price schedules in licenses assume that it is worth this much or slightly more in fluid milk, the differentials commonly allowed ranging from 3 to 4 cents for each additional tenth. At the other extreme, some price schedules have placed its value in fluid milk at 5 or 6 cents, obtained by dividing the price of the fluid milk by the tenths of pounds of butterfat in it; but this method of analysis is specious, since it assumes that it is only the butterfat in fresh daily delivered milk that has any value. According to a rational analysis, the value of butterfat in fluid milk depends upon the preference of the consumers for higher testing milk, and the scarcity in the area of butterfat as distinguished from milk, which may be a very real scarcity in areas where most of the cattle are low-testing Holsteins and the cost of keeping the test up to requirements is considerable. Probably no method of analysis can be devised that will determine this value. It surely will vary greatly by markets. Cut-and-try procedures will have to be followed for the most part. With butterfat at 30 cents a pound, a differential of 4 cents per tenth is a good one to start with—only if the milk coming to market begins to contain more butterfat than the consumers are willing to pay for at this rate will it need to be lowered. There are definite advantages in putting the differential upon a sliding-scale basis so that it will change with butterfat prices.

MILK FOR SPECIAL USES

Much of the time of local milk administrators and AAA workers has been taken up with adjustments for different types, grades, and classes of milk for different uses. Prices for certified milk, "Guernsey" milk, and other special

types of milk—even for Grade A milk—in many cases have been omitted on the assumption that they would establish by themselves a proper relation to prices of family or Grade B milk; and this has usually happened. The difficulties have centered around milk for special commercial uses, and relief milk.

Milk for such commercial uses as in bakeries and ice-cream plants should be sold for enough more than it would net the producers in Class II or Class III uses to pay the extra cost of transporting it to the city as fluid milk rather than as cream or butter. One should not expect the producers to sacrifice more valuable alternatives in order to provide milk for such uses. If, however, the milk is being shipped regularly to the market anyway and then converted into cream and butter, anything that can be obtained for it above cream and butter prices in the city is clear gain. Of course no producers' association should be in the position of shipping such milk to market except to the extent needed for the day-to-day reserve supply.

Much controversy has developed over the price of relief milk. Positions taken have ranged all the way from the standard retail schedule for consumers to Class II prices to producers plus out-of-pocket or special costs of city delivery. As to prices to producers, the answer is the same as for milk for commercial uses, except for one important further consideration; namely, the relation of the relief sale of milk to regular sales. If, as has been observed in some markets, consumption of milk by those on relief falls off a half or more when milk as such is no longer furnished free, then at least half of the relief milk is in addition to what otherwise would be sold, and this should be furnished to dealers at Class II or Class III prices in the city in case such milk is being shipped regularly to the

city anyway; and at Class III prices in the country if it has alternative uses there. In a period of emergency such as the present it would seem that distributors should figure their margins on such milk in terms of the extra actual current outlay upon the relief milk that would not otherwise be consumed; and this would give a rather small margin. It would mean charging no overhead of any kind to this business. Unit costs of delivery of such milk should be calculated in such a period, not by dividing total delivery costs by the units of all milk delivered, but by dividing the extra cost of delivering the extra relief milk by the numbers of additional units of such milk.

COMPETITION IN MILK MARKETS

What the producers' associations and the large dealers principally sought in the marketing agreements was the ending of various forms of competition which were variously called "chiseling," "bootlegging," "cut-rate competition," and the like.

The usual definition of bootlegged or cut-rate milk was milk in excess of their bases which producers were glad to sell at anything above Class II or Class III prices. This statement overlooks the fact that such excess milk, even though it might represent over half the output in some months, was still commonly shipped to market as fluid milk, there to be converted into cream and butter; and that by the time the heavy transportation charges had been paid it could not be sold at very low prices. No doubt some of it found fluid outlets in the city at a price somewhat under the supposed Class I prices, but in normal times the menace of such milk is not great unless Class I prices get too far above Class II and Class III prices. It has been shown in Chapter VI that adding even as little

as 8 cents of monopoly premium to the Class I price will significantly increase the flow of such milk; and in Chapter III that premiums of much more than this in effect prevailed from 1930 to 1932 because of the failure of milk prices to fall as rapidly as butter prices. Probably in most markets the larger portion of bootlegged milk did not come out of the surplus of regular fluid milk shippers, but from cream shippers, condensery patrons, and the like who were in a position to break into the fluid market the moment that Class I prices a little more than covered the extra transportation charges.

The co-operative which has taken on a large excess supply of milk, and has thereby lowered its blended price to members, is particularly subject to such competition, since the new non-member shippers will ship only what they can sell at fluid milk prices. The deals which they make will usually be at prices part way between the Class I price and the blended price—enough above the latter to meet the transportation costs on fluid milk, to compensate them for the loss of skim milk, etc. The dealers may not take their milk regularly, but only at certain periods. If any cream shippers, condensery patrons, and the like live well within the milkshed and can make a deal with a small distributor, a peddler, or a milk depot, there will be a rather wide margin to split. Such a distributor or peddler can sell such milk under the regular Class I price and still pay the farmer well above the blended price plus transportation costs. Within the boundaries of most milksheds in the Mid-West are many dairy farmers who did not ship fluid milk before 1930, enough of whom became sources of bootlegged milk in 1931-32 to help greatly in breaking down the artificial price structures that were being maintained.

The program represented by the AAA marketing agreements and licenses undertook to include these new shippers and the agencies buying their milk, to give these shippers Class I bases (if the base-rating plan was used), and to require the dealers buying from them to equalize their returns. But, as pointed out above, there were many injustices in the way in which the ratings and equalization were arranged. For this reason, and also merely because many of the producers and dealers wanted no interference with the existing arrangement, the program has not been carried out effectively in most markets. Moreover, the price structures that were set up under the agreements and licenses re-established in part the very conditions which brought such bootlegging into existence. The prices that had come to prevail in 1932-33 had largely removed the inducement to bootlegging in many markets, but the price schedules in the licenses restored this inducement. Consequently a new lot of former cream shippers and others tended to become milk shippers, and to add to the problems of administering a license.

Fundamental to an intelligent opinion on this subject is an appreciation of how competition has failed in this field of activity, as in numerous others, to attain its supposed objectives. It has no doubt served as a stimulus to improved methods and greater internal efficiency; but the gains from these have not been realized by producer, distributor, or consumer except in limited measure. They have been mostly absorbed in supporting an increasing number of milk dealers. Margins have tended to widen rather than narrow.

The method by which this has developed is a familiar one. Essentially it has consisted of the use by new dealers of questionable or at least socially undesirable methods to

get a foothold in the market by taking business away from the established dealers. This loss of business has raised unit costs and taken away any gains these dealers may at the time have been realizing from recent improvements in methods. Once established, the new dealer is as anxious as the old dealer to have margins adequate. The net effect of this constant intrusion of new dealers into milk markets has been rather to raise margins than to lower them.

Of the questionable methods used by new dealers, the following are the more common: bribing milk-wagon drivers to shift to them and bring as many of their route patrons with them as possible; bribing prospective customers by special inducements, service, and privileges; local price cutting, that is, selling at lower prices in strongly competitive territory; temporary local price cutting, that is, cutting prices in a certain district long enough to get most of the business and then raising prices to the prevailing level, the temporary loss in one section being borne by the profits in all the others; buying milk at reduced prices under one camouflage or another; and misrepresenting the quality of their product. No doubt the system of paying wagon drivers bonuses for new customers leads to questionable conduct in actual practice.

With competition thus functioning, one cannot determine by a comparison of margins with costs in any city whether or not the margins are too high. In general the costs and margins keep pretty well adjusted to each other. They are high in some cities because competition has worked out so badly as to give them an expensive system of milk distribution; low in other cities because competition has worked less badly. Any attempt at public fixing of margins must therefore proceed very carefully. If the margins are set too high, the net result shortly will be

more dealers and costs pushed up to the new margin. If the margins are set too low, some of the less well-established dealers will be crowded out presently. The profits of the others will be reduced also, but getting back more business will shortly raise them again.

To many of the questionable practices above described, the term "chiseling" has come to be applied in recent years. But the term has also been loosely applied by many to simple price cutting. Anyone who underbids a competitor on a deal has been called a chiseler by some of the worsted competitors. Yet without such underbidding there can be no real competition. Most outsiders will agree that any milk dealer who has lower costs than his rivals not only is justified in lowering his prices and building up his volume, but is open to serious public criticism if he does not. Even lowering prices as a means of increasing volume and thus lowering costs is a socially desirable practice.

Obviously no easy line can be drawn between desirable and undesirable competitive practices. The NRA attempted to use cost as a guide, providing in many of its codes that no prices should be made that did not include certain specified costs, usually plus a margin of profit. Some would argue that all costs should be included, fixed as well as prime costs. But realists among industrialists and merchants know that they must be free at times to sell at prices that include only part of their fixed costs. Otherwise they would never be able to reduce overstocked inventories or to operate their plants in times of depression. The cost basis is therefore likely to prove unworkable.

In practice, costs are also likely to prove unworkable as a basis for defining fair price policy for another very simple reason; namely, that they cannot really be determined separately for different products manufactured or sold by

the same enterprise. For example, a milk dealer selling milk and cream both at wholesale and retail, and also retailing skim milk, buttermilk, chocolate milk, butter, and other products from wagons, cannot really determine the unit costs of handling any of these. To be sure he may make up a system of cost accounts in which rules are laid down for allocating wagon delivery costs among milk in quarts, milk in pints, cream in different sized bottles, skim milk, etc.; but making such rules does not determine the costs. The resulting figures are only as reasonable as the rule; and judgments commonly differ widely as to what rule is most reasonable in any case.

The issue is clear in the case of milk and cream. All dealers take a wider margin on a bottle of cream than on a bottle of milk. No doubt this is warranted by the smaller volume of sales. But exactly how much more is warranted? One might proceed by ascertaining as nearly as possible what expenses would be saved the business if it took cream off the wagons, and by then dividing these by the number of bottles of cream handled. This would charge all the overhead to milk, and give margins much lower than now taken. Again one might proceed by dividing the overhead or fixed costs in proportion to the respective value of the milk and cream handled. But can the reasonableness of this be established? In any event, the dealer must handle the cream because his customers want it; he would handle it if necessary for less even than the special costs.

STORE DIFFERENTIALS

The problem of competition takes on a special form in the case of competition between two such dissimilar milk distributing agencies as dealers and stores. Most inde-

pendent grocery stores handle milk simply as a convenience for their customers, at a margin of around one or two cents per quart. These stores do not know whether they gain or lose on these margins. They would handle the milk in either case. They would all like a higher margin but they cannot raise their prices without offending their customers. They usually cannot buy for less because the other distributors and co-operatives hold together and refuse to sell for less. Neither of these groups wants store selling to expand. Some stores, however, have taken enough interest in the matter to go out and locate a cheaper source of supply—perhaps a small independent wholesaler or a producer group; and some, especially certain chain-store organizations doing a cash-and-carry business, have sold this milk at more than a cent or two below the wagon delivery price. They have attempted to justify these differentials on the ground that the customer who pays cash and carries home his own milk is entitled to a lower price and that their costs of handling are lower because of savings in credit and delivery.

It should be apparent that the differential issue cannot be resolved in terms of costs. If wagon distributors cannot isolate their milk and cream costs, stores surely cannot determine separate costs for milk, cream, bread, potatoes, canned fruit, sugar, pepper, soap, and the multitude of commodities they handle. The nearest one could come to answering the question of the reasonableness of the margins on milk and cream would be to make an array of the margins on a score or more of the commodities handled by stores, together with information for each as to volume of sales, rate of turnover, importance in the consumer's dollar, space and storage requirements, handling requirements, waste and spoilage, and packing costs borne by the

stores, and to let the reader form a judgment from these as to the comparability of the milk and cream and other margins.⁶ Such analysis along these lines has already shown that retail margins on all dairy products are low for reasons that are in part apparent.

One might or might not conclude from such an exhibit that stores were handling milk or cream or both on narrower margins than seemed reasonably comparable with those on other commodities. Even if one concluded in the affirmative, this would not convict the stores of improper competition. The same analysis would show that stores regularly handle some staple commodities on low margins. They find it poor business not to do so. Calling these "loss leaders" does not prove anything. Many of the commodities handled by stores—such as fruits, vegetables, meats, butter, eggs, coffee, tea, spices, and even bread are also sold by specialty stores. No one has undertaken to protect these specialty stores against the competition of grocers selling their commodities at low margins, in general or at particular times; or to protect specialty stores of all descriptions from the competition of department stores. Surely no government agency can reasonably be asked to step in and protect wagon distributors of milk against sales by stores merely on grounds of margins.

If the government steps into the problem—as it can scarcely avoid doing if it undertakes to fix retail prices—it will need to base its decisions on other grounds than cost comparisons or loss-leader arguments. Such a basis might be need of an available fresh supply of milk on Sundays as well as week days for those families without refrigeration; or the relative effect on consump-

⁶ Such analysis can be reduced to a more definite basis if desired by means of a procedure known as "rank correlation."

tion of wagon delivery and selling over the counter. The dealers have offered plausible arguments in favor of wagon delivery on this latter basis. They maintain as a principal argument that families buy more dairy products if a regular supply is left on the doorstep each morning, including Sunday. The stores maintain, in opposition, that most families order meat, green vegetables, fruit, or bread each day anyway, and that to add a bottle or two of milk to the order when needed is no inconvenience. The statistics on the subject are poor, and inconclusive if properly analyzed. Certain changes in living habits have contributed to increased store selling of milk and cream; among these are hand-to-mouth buying, smaller families, apartment living, and home refrigeration. These changes probably will contribute more to the same effect in the future.

Distributors point out that loss of business to stores increases their unit costs and puts them at a disadvantage in meeting store competition. This no doubt is true, if one thinks of the existing milk plants and wagon routes as all being maintained in service. If store sales were to increase in a city, presently some of the wagons would be withdrawn, and later some of the plants would be closed or converted to other uses, and before many years the then existing equipment and plants could be as fully utilized as before.⁷ There would be some losses in investment; but they are occurring constantly in our society, and we do not undertake to protect business enterprises against them.

Even though costs were raised somewhat, however, this would not be a conclusive argument against store selling

⁷ There would still be enough milk delivered in most sections of the city to give full loads and close deliveries to two or even three wagons. The difference between delivery cost with one, two, or three wagons delivering in a given area is not very great. The costs rise when from six to a dozen or more wagons traverse the same territory with long journeys between doorsteps.

of milk. Retail meat shops might now have lower costs if grocery stores were not also carrying meats. Conceivably the future may find wagon distributors handling less than half the retail fluid milk selling of a majority of our large cities, and stores handling the rest. Those who want wagon delivery may, under this circumstance, need to pay an extra cent a bottle for it, although this is not probable. If so, such an outcome would be no different from the familiar one of our paying more for street-car service because of motor busses and private automobiles.

MONOPOLY PRICES

Many business men are still more or less startled at having a charge of monopoly practice leveled at them. They need not be. Most supposed competition is merely a form of monopolistic competition. The moment any manufacturer of a product decides not to reduce his selling offer to the limit if necessary to make a sale, he is engaging in a form of monopoly practice. The more efficient manufacturers seldom cut their prices to the limit. They figure that they can get a respectable volume of business without doing so, and that at the higher margin of profit they will make more even though the sales are not as large as they could be. If the two or three leaders in an industry all reason in this way, we can be sure that prices will be kept at a comfortable level. If a small manufacturer undertakes to build up volume by cutting prices, the established firms may ignore him as long as possible; or they may turn on him and undersell him till they put him out of business. The net result of such policies is that manufacturers' prices tend to hold rather firmly, and all without any necessity for actual conferences and agreements. Of course the so-called open-price associations through which

supposed competitors are kept informed of one another's transactions have assisted greatly in achieving these results. No doubt many secret understandings have also been arranged.

That such practices as these widely maintain is strongly suggested by the manner in which manufacturers' prices held up during the first part of the present depression. The manufacturers took their losses in volume of sales, not in prices.

Merchants and middlemen generally do not commonly find monopolistic competition so easy as do manufacturers. Ordinarily there are too many of them. In not a few markets, however, the distributing business was in few enough hands so that margins were undoubtedly held up in the manner explained above from 1929 to 1932. Moreover, for many years the distributors in many markets have actually formed themselves into loose associations for purposes of discussing prices among themselves and with the producers.

A special condition in some milk markets contributed largely to this same end; namely, the presence of a producers' monopoly and a system of price and margin determination by collective bargaining between the two monopolistically inclined groups. Producers' co-operatives always find their monopoly power more or less limited even though they control 90 per cent of the milk supply. There are always non-members and independent dealers who do not buy from them and their own members are always likely to expand their production if prices get too high. Nevertheless, many co-operatives have had a real measure of monopoly power and they have used it in their bargaining with their dealer buyers.

A rational assumption would be that when the price

committee of the dealers' association meets with the price committee of the producers' association, the former will ask for relatively low prices and the latter for relatively high prices. In general, no doubt this has happened, particularly in the early years of such negotiations. But as time has worn on, these opposing groups have discovered that they have some strong interests in common. The dealers have also learned that in times such as prevailed before 1930, with rising milk consumption, the retail price of milk could be stepped up without difficulty on very slight pretexts—a little newspaper story about higher feed costs or short pastures would do the trick—and that it was easier to do this than to oppose the price increases demanded by the producers. Moreover, the producers were usually ready to make some concessions in return for the price increase. The outcome of many a price conference was an increase of a cent a quart to the consumer—46 cents per hundredweight—accompanied by an increase of 30 to 35 cents to the producer.

Here was collective bargaining with one of the interested parties—the consumer—not even consulted. Such a situation is not unusual. Many a wage increase has been granted to union labor with the expectation that it would all be passed on to the public in higher railway rates, higher prices of coal, higher construction costs, etc.

Between 1921 and 1930, collective bargaining between dealers and producers worked increasingly in the manner indicated. Exact measures of this are of course hard to make. But for the years 1925-29, blended prices in nine important cities for which fairly dependable data are available exceeded the transportation differential (differential between milk and cream rail or hauling charges, per 100 pounds of milk and its cream equivalent) at the edge of the

milkshed by amounts ranging from 46 cents to \$1.41, the average being 77 cents. The average for the four Mid-West cities included was 60 cents; for five cities in the Atlantic Seaboard states, 95 cents. These amounts cover the differential necessary to include sanitation standards, value of skim milk, and additional local hauling costs in some instances. The lowest figure, 46 cents, may be taken as including very little if any monopoly element; the market is a relatively small one set down in the midst of a large supply of dairy products, with a plan for determining prices that affords very little opportunity for artificial price enhancement. All above this, except for clearly higher sanitation requirements in some cities, and possibly higher hauling costs to the country receiving station, can be taken as monopoly premium. To obtain blended prices this much above a competitive level, Class I prices must have been appreciably higher than Class II prices in any market with a monopoly premium of 25 cents or more, as in most of the Eastern markets, especially if the surplus going into Class II and Class III uses was considerable.

As explained in Chapter VI, the expansion of production following such price enhancements may lower the blended price by more than the monopoly price amounts to, if the new supply is shipped to the city as fluid milk and there converted to these other products. Ordinarily the expansion of production by the old producers is not enough to accomplish this result. The danger arises from the supplies of farmers within the old milkshed who may shift from other lines of farming to dairying or from shipping cream to shipping milk; and from the expansion that may come about as a result of bringing a larger radius of territory within advantageous shipping distance to the

market. The association following such a policy is thus faced by two alternatives: one to refuse to accept any new members outside of the old milkshed or even within the milkshed, and the other to grant them membership. Upon choosing the first alternative, it probably will find a new crop of independent dealers appearing in the market drawing a milk supply from these excluded producers. These dealers will be able to undersell the contracting dealers because they will be able to buy their milk somewhat under the price being paid by the co-operative. An opportunity will also be furnished for stores to develop their own sources of supply in this new territory. A little experience with this method is likely to induce the co-operative to accept the new producers.

A further result is that these lower returns to members of the co-operative provide an additional opportunity to independent dealers. They can select members whose production is more regular than the average in the market, offer them a few cents more than they are getting from the co-operative, and still obtain a milk supply at a price which will enable them to undersell the contracting dealers. In such a situation also a new co-operative may spring into existence, made up of members whose supply of Class II and Class III milk is relatively low, and this co-operative may be able to obtain an outlet in the city which provides better returns than its members would get in an established co-operative.

Thus a co-operative carrying to more than a limited extent a policy of monopoly premium on Class I milk except in periods of expanding consumption is likely to find itself in difficulty before very long. It may seek and obtain the help of the city health officials and solve its problem in part or temporarily. A number of co-oper-

atives under such circumstances have adopted the base-rating plan. This has usually helped because it has given their more even producers an advantage in larger relative returns and thus kept this group from being drawn off by independent dealers or from forming a new co-operative. But as explained on page 200, the introduction of the base-rating plan created another difficulty, now being met by equalization of returns. But no co-operative association could operate an equalization plan satisfactorily alone.

It has commonly been said that the officers and managers of milk producers' associations have recognized that a program of monopoly premiums in Class I milk commonly leads to serious difficulties sooner or later and that they therefore have avoided such policies. Perhaps this is a correct statement. We can be sure, however, that the rank and file of producer members of very few of the co-operatives recognize its truth. The officers are therefore constantly under pressure to get higher and higher prices for the producers whether this is good policy or not.

The data presented in Chapter II strongly suggest that in the actual situation in many milk markets, probably most milk markets in the East, the difficulties arising from attempting monopoly premiums are not adequately realized. They would have caused serious difficulties even in 1925-29 except for the lag of producers in responding to price stimuli in a period of expanding consumption.

At least we can be sure that producers did not realize the dangers sufficiently when the depression came in 1930 and butter and cheese prices started downward rapidly. Officers and managers of milk producers' associations may have understood thoroughly what the consequences of maintaining Class I prices at this time would be, but their public statements at the time do not so indicate. Surely the

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producer members had no adequate comprehension of the probable results of such a policy. As one would expect, the reaction was not immediate, and this fact may have given false hopes to the officers and managers of associations. They may have believed for several months that they were going to be able to hold the monopoly premiums without fearful consequences. By 1932, however, there could be no doubt as to the outcome.

Is it not also significant that in 1933 the officers and managers of milk producers' associations were still confronted by the demands of their members for a restoration of prices to pre-depression levels even though prices of competing products were still very low? Does not this make clear that even in 1933 the rank and file of fluid milk producers had not yet learned their lesson concerning the evil effects of monopoly prices?

The further lesson which they, and their association officers, and the AAA, had to learn was that not even the strong arm of the federal government could offset these same effects.

CHAPTER IX

ALTERNATIVES IN PUBLIC CONTROL

The last three chapters have attempted an economic analysis of the price and other relations within milk markets and of the problems arising therefrom. We now need to approach the same subjects from the standpoint of the economic and political organization in which these relationships are to work themselves out, the forms and degrees of public control involved, and the method of their functioning, in general and with respect to particular problems. The present chapter will deal with the more general aspects of the foregoing and the next with applications to important problems.

ALTERNATIVE FORMS OF CONTROL

Before considering in detail any one of the several possible forms of control, we need to have in mind the whole range of alternatives. Accordingly, we shall begin by defining these briefly. It will appear at once that much of the discussion of fluid milk problems has unconsciously assumed some one of these forms of control and that very little of it has considered the wide range of possibilities; yet this latter is absolutely essential to sound conclusions. For present purposes, the possible lines of control which fluid milk marketing may take may be defined as follows:

1. That which prevailed before the passage of the Agricultural Adjustment Act and state milk control acts. In general the only control, outside of the sanitary regulations, was that obtained through collective bargaining between producers and distributors, and other forms of col-

laboration between them. This control was subject to the limitation of the Capper-Volstead Act, expressed but applied very little, that prices should not be unduly enhanced; to the prohibitions against unfair competition and related subjects entrusted for enforcement to the Federal Trade Commission, applicable more especially to the dealers; and to certain remaining prohibitions in state statutes of the same general order.

2. Open competition, enforced as nearly as possible with the aid of market information service, grading, inspection, and all the devices employed in the case of organized exchanges and auction markets.

3. At the other extreme, public ownership and operation of the business of distributing milk and cream, with purchase prices probably determined by competitive bidding or the like.

4. Somewhat less extreme, public utility regulation of private distributors, including prices to farmers and resale prices. Such regulation can proceed along three lines: (a) keeping most of the present distributors in business, (b) reducing the number to two or three in any one city block, and perhaps reducing the number of plants also, and (c) reducing the number of distributors to one, or one for any major section of the city, as is the case for water, gas, light, transport, etc.

5. Another form of the extreme, extension of the present system of collective bargaining so as to give a clear majority of milk producers and distributors, ordinarily organized into associations, extensive if not virtually complete control over milk prices and related matters, plus public enforcement of these prices. This has been the desire of some milk producer associations. It represents a point of view similar to that which the American Federation of Labor is demanding for organized labor.

6. Collective bargaining under efficient and effective public supervision and control, with all the parties at interest effectively represented, and the rights of the public adequately protected.

Let us now consider these several forms of control more carefully.

THE PRE-DEPRESSION FORM OF CONTROL

If the government wished to relieve itself of as much responsibility as possible, it could do nothing better than return at once to the status of control of the milk industry that prevailed in the seven years before the depression. But would such a return be acceptable to the industry, and desirable socially? In many markets under license it would result in lower prices to producers, if prices of other dairy products subside presently as expected, and hence defeat the emergency price-raising objective. Both from an emergency and a continuing point of view, the organized milk producers of many markets would not be satisfied with a situation under which non-contracting dealers could buy milk at one price regardless of use, perhaps at a lower price than they were asking of their contracting dealers; and the contracting dealers would object strenuously to the price cutting of independent dealers, which they would believe was made possible only by underpaying the producers. Both of these groups believe that a system of equalization of returns to producers is needed, both now and after the emergency is over. The difficulties arising on this score would become acute at certain periods, such as during depressions.

The argument from a public point of view is that in practice the pre-depression form of control did not preclude a monopoly element in the prices in some markets even before 1930; and that certainly it did not bring down

prices promptly enough in 1930 and following years. A more important argument is that such a system of control has not checked the growth of wastes from competition in this field. The dealers and the producers with whom they contract would state the latter argument in terms of the evils of unfair competition that have been permitted. The public is also interested in having this checked; but differences would arise over the definition of "unfair."

So far as the immediate situation is concerned, monopoly prices for fluid milk are possible in some markets even now without the support of a federal license or state control board regulations, because of the employment by dominant dealer groups, or strong producer associations, or both combined, of arrangements or practices that are extra-legal, that is, beyond the scope or purview of the law. Public health authorities may also assist to the same end. If the price-raising objective is paramount, one may argue that any such aid from dealers, producers, and health authorities should be welcomed; but from a continuing point of view the danger is great that these arrangements and practices will persist after the emergency is over, and will be rooted out only with great difficulty if at all. A scheme of clean-cut open public support of monopoly prices that could be dropped completely when the emergency ended would be much safer and more desirable.

Stopping various forms of unfair competition can be defined as an emergency objective of the AAA, but only as it may appear necessary to support higher prices to producers, or perhaps as a return to dealers for their higher prices to producers. Reducing the costs of competition is wholly outside the immediate objectives of the act; but both this and checking unfair competition may well be included within the compass of any statement of objectives

that conceives of the emergency program as merging into a continuing program.

Should the fluid milk industry be returned to the pre-depression forms of control, either now or in a few years, both the public interest and the continuous prosperity of the producers and dealers require that the United States Department of Agriculture and the Federal Trade Commission set about systematically to enforce the Capper-Volstead Act and the provisions relating to competition, and that they make arrangements to secure the necessary information concerning conditions in each milk market and developments from month to month. For wholly intrastate markets, the states have a similar obligation.

A MORE COMPETITIVE MILK MARKET

Our most competitive markets are our public markets. Our best public markets are those where the product sold is actually present in bulk or in sample, or is described with reasonable accuracy by official grades, and where the buyers and sellers, or their representatives, are present in person and bid against each other openly. And, most important of all, in these markets the buyers and sellers are all constantly informed as to the prices at which the various grades are being bought and sold, and as to the state of supply and demand in the producing and consuming territory. There are important difficulties in the way of developing such a market for fluid milk and cream; and never could all of the foregoing conditions be realized. Nevertheless, it is entirely possible that to have turned the organization of milk markets in this direction rather than toward privately conducted collective dealings between organized producers and dealers would have worked out more satisfactorily.

Suggestions of this nature have occasionally arisen in some milk market or other. For example, an "outlaw" group in the Connecticut market at one time demanded that all "surplus" milk be offered for sale each day to the highest bidder. One of the state milk control boards for a time sold some out-of-state milk in open market. The nearest approach to such a market is found in the cream markets in some Eastern cities where much of the cream is from outside sources and handled through brokers. In a few instances, the milk administrator has endeavored to improve such markets by arranging for price reporting.

Should public policy turn in the direction of open competitive markets for milk and cream, the following are some of the lines that might be followed:

1. Requiring each dealer to announce and post publicly his buying prices for different grades, and selling prices also if desired, and to adhere to these prices until he announces a change. This might be extended to requiring uniform prices to all producers and to all buyers, at resale according to some schedule, the former possibly including a base-rating system, and the latter possibly allowing for the size of the purchase. Needless to state, such regulations would be difficult to enforce; but perhaps not more so than the uniform prices now being attempted.

2. Imposing a more complete and regular system of inspection and grading. This might involve giving each producer a publicly declared rating once a month on his milk or cream of the preceding month, in terms of butter-fat test, solids test, bacteria count, sediment test, and any other properties essential to quality or related to consumer preferences, these ratings having been determined by a sufficient sampling of actual milk. The factor of distance from the consuming center could be included if desired.

Dealers' supplies would need to be given similar ratings if the control extended to distribution. Obviously with such a system not only would the public be better protected than at present against poor milk and cream, but all parties would know what they were buying. Quality factors would tend to be valued according to consumers' actual needs and preferences.

3. Supplying the producers, dealers, and users with full information as to current and prospective supplies, as to factors likely to affect the latter, as to prices in other milk markets, as to prices paid for milk for competing uses in adjoining territory, etc.

4. Arranging for bidding at some form of public sale. Any suggestion following this familiar line is likely to seem a bit fantastic when applied to milk. Yet it is conceivable that some system of assembling all producers' offers once a month, the offers specifying definite amounts of milk of certain grades but providing for excesses or deficits in quantity or grade, would make some form of competitive bidding possible and establish a set of prices to producers that would serve as a basis for other transactions in the market.

These indicated lines of action are not to be understood as proposals; they are presented merely as a way of showing what would be needed to make milk markets more competitive. If a more competitive market is desirable, any one of them will help in that direction. Three of them are easily possible, but perhaps not worth the expense involved. No doubt in some markets expenses fully as large are now being incurred by existing agencies.

With such a market set-up, monopoly prices would be possible only through restriction of milk receipts, as with cotton and wheat at present. Processing taxes and benefit

payments might conceivably attain the same end for dairy products. Once the emergency was over, the prices established would tend to keep production and consumption in balance without production control, probably in better balance than maintained in most milk markets from 1923 to 1933. The function of government would consist of officiating in this balancing process and facilitating its smooth operation. Access to records of market agencies would be needed in order to carry out some of these lines of action.

PUBLIC OWNERSHIP AND OPERATION

At the other extreme from the wide-open competition just described would be ownership and operation by the municipality of the whole function of getting milk from farms to places of final consumption. The advantages of this method would arise from the orderliness and unification of the work that would be made possible. Not all of these gains would be realized at the start, since existing country plants, city processing plants, and the like would tend to be used for a while. But before many years it would be possible to reduce the various operations to their most economical form. What this would be must be conjectured in large part. Probably most cities of under half a million population would find one processing plant located at the most convenient receiving point to be most economical. The most economical delivery system would probably consist of large trucks manned by one driver and two men to carry the milk into the homes. Very little milk would be shipped to the city and later converted into cream. Transportation to the city would be in full tank carloads or large truckloads. Smaller trucks might be used to assemble the milk for the tank cars or large trucks. It is usual to speak of the wastes in the present system in

terms of duplication of routes and the like. A little analysis reveals that a more accurate description is in terms of plants, wagons, trucks, and wagon and truck drivers being used under full capacity. As to the saving that could be made between the farm and the consumer, the writer is willing to venture an estimate, or conjecture, of at least 2 cents per quart of milk in many milksheds and cities—and this figure is not named without some analysis of actual data. A portion of these possible savings might, of course, be lost through the alleged wastes of public business; however, that there is any difference between the efficiency of publicly operated gas, light, or water systems and of private systems operating on a unified basis, has by no means been established.

Arranging terms of purchases with producers would become a special problem under such a plan; but the city would always need to pay enough to take its needed milk supply away from competing uses. The amount needed could be determined by a system of following the changes in the prices of competing products, of trying out certain gross differentials for meeting sanitation requirements, loss of skim milk, and the like to see their continuous effect on the amount supplied, and of comparison with prices and price changes in other milk markets. Presumably some sort of flexible schedule suited to each market could be developed. Some special allowance would need to be included for changes in prices of feed in case the fluid milk producers purchase more feed than the producers of competing dairy products. Another possible procedure would be to follow the established precedent in government buying—competitive bidding; but some important adaptations would be needed. State public utility commissions could be called in to arbitrate in cases of disagreement between the city and the producers.

The major disadvantages of such a procedure are two: (1) The milk industry would be brought into politics a little more than at present—but only a little more. The offsetting gain is that its political position would be clear for all to see, instead of largely under cover and confused as at present. (2) The consumers would not have the present easy redress against grievances by changing to another distributor. A single small buyer is somewhat helpless under public provision of services and supplies—his ultimate recourse is political or by way of the press.

A PUBLIC UTILITY

Most of those who talk of milk distribution as a public utility service think of it in terms of regulating prices, services, and related matters for the large and multifarious group of operators that are found in such markets, whereas the usual public utility rates apply to one or a few companies. The price of milk which looks reasonable from a public welfare standpoint may force numerous producers and distributors out of business. Public utility commissions only occasionally have had to deal with situations in which the rates they establish force numbers of enterprises to close down or sell out. They are always disturbed, and frequently opposed in the courts, when they do have to make such decisions. A further complication is the division of the industry, except in the case of dairymen distributing their own milk, between producers, distributors, and transporters. The usual public utility rate determination concerns only the rate paid by the user. If commissions of the public utility type set milk prices, they can scarcely avoid fixing rates and returns for all three parts of the industry. The fixing of prices is further complicated by the variety of types of business enterprises handling milk—retailers and wholesalers, wagon distributors and

stores, producer-distributors, and various combinations of all these. The wholesale rate that a combined wholesaler and retailer would like may put an exclusive wholesaler out of business. Needless to state, also, with so many and such varied types of distribution agencies, a very difficult problem of enforcement not found in dealing with present public utilities would be involved. Accordingly a more rational form of public utility regulation of the milk industry would look toward concentration of it in fewer hands than at present, perhaps all into one enterprise in the smaller cities at least.

It may be argued that setting up such a private monopoly for the purpose of simplifying the control of the marketing does not have warrant in milk distribution as in transport or in gas, light, heat, and water distribution, since no essential monopoly is created by reason of the economic waste of duplicating these services. Once a gas or transport company has developed service for a community or area, a second company finds great difficulty in getting started; and if it does get started, the public will presently be paying the bills of a great waste of labor and resources. The business of distributing milk has shown a tendency toward concerted action in many markets; also important economic wastes, as above indicated, from duplication of plant facilities and delivery and use of facilities under capacity. But the concerted action does not begin to compare with that which comes when one company completely controls a public utility; and the wastes fall short of those that would arise in the recognized public utility fields if competition were to be enforced. The very circumstance of the large number of business units in the milk industry as compared with the few in the regular public utility lines, is evidence to this effect. The courts

may well rule, however, that economic grounds, in combination with the need for a dependable supply of good milk, furnish ample basis for a program of consolidation under a public utility commission.

Private ownership and operation of one or a few consolidated milk distributing enterprises for a city, with prices and services regulated by a commission, might have much to recommend it over municipal operation once it was achieved. A principal objection to it is the delay likely to be experienced in arranging it. The extent and form of the consolidation, and the rate at which it should be consummated, would need to be determined carefully for each market. An intermediate step might take the form of limiting the number of companies granted a permit to sell milk in any one city block.

Adoption of the public utility type of control as a federal policy would probably call for establishing a federal milk commission, paralleling the present Interstate Commerce Commission, to take the place of the present milk control under the AAA. The states would need to set up authentic milk commissions endowed with the usual public utility powers and using recognized public utility procedures, to take the place of the present "boards."¹

COLLECTIVE BARGAINING MOSTLY UNDER INDUSTRY CONTROL

The main arguments for this plan are: (1) that only local administration can really be sufficiently informed about conditions and developments to be effective; and (2) that compliance will be obtained only if the orders and rulings are reasonably reconciled with the interests of the dominant groups in the market. Those favoring this set-up therefore propose a local governing board or committee

¹ See Chap. XI.

composed entirely of representatives of the majority elements in the market, its decisions to be subject only to a certain measure of veto power in the hands of the Secretary of Agriculture or some similar state authority. The orders of the local board would necessarily be the result of negotiations between the representatives of producers and dealers on the board. Much of the time, both groups would favor the same order. At other times, a compromise or some form of a trade would be necessary. Some such plans have included a board of arbitration.

The sponsors of this proposal are willing to concede a certain measure of power to a higher authority in return for public enforcement of the orders of the board, provided such enforcement is reasonably performed. If necessary and where possible, they may choose to do their own enforcing and perhaps even ask that the veto power be removed, or at least not exercised. In any case, they do not intend that the veto power shall really stand in the way of any of their major objectives, and hence want it kept in position to be subjected to political and related pressures.

The usual arguments against such majority control are that the interests of the minority groups are not sufficiently protected; and likewise the interests of the milk-buying public, for reasons explained earlier. The answer given to the first is that if the minority is not made to conform to some reasonable program of action, it is able to defeat the interests of the majority. This answer is sufficient, provided some arrangement is not possible whereby the opposing views of the majority and minority can be weighted proportionately, and provided the matter is one in which uniformity of action is really needed. Surely it is not always needed in the matter of price, unless we are convinced that competition is harmful and must be elimi-

nated, for freedom to undersell is the essence of competition. The generally accepted view in economic affairs is that wherever possible the minority should be represented in such a way that its interests will be taken account of in decisions upon courses of action. As rarely as possible in economic matters should a decision represent wholly the interests of the one group that is able to poll the most votes. When uniformity of action wholly according to the wish of the majority is really necessary, the majority should ordinarily be two-thirds or more.

The answer given to the argument about the interests of the consumer is that the organized dealers and producers recognize that they cannot establish prices on a monopoly level without bad after-effects, and can be trusted not to try it. Unfortunately the experience of the last ten years does not altogether justify this faith.

Types of local control which the sponsors of collective bargaining by majority rule would like are the following:

1. Local committees not less than one-half of which are chosen by the producers in the milkshed.
2. Organization of producers and dealers subject to a 60 per cent vote of their numbers or volume.
3. Prices, terms, and conditions of sale determined by the wishes of 60 per cent of the producers and of the distributors of 60 per cent of the volume of milk, subject to approval of the Secretary of Agriculture.
4. The majority group of producers to provide the same marketing services for the minority as they want for themselves, to determine the charge for this and assess it upon the minority through some system of pooling returns and expenses with them.
5. The local committees defined in (1) to have control of the milk supply through their power to grant or refuse

to grant permits to new shippers, subject to appeal to the Secretary of Agriculture.

COLLECTIVE BARGAINING WITH EFFECTIVE PUBLIC CONTROL

This set-up would differ from collective bargaining mostly under industry control in that the local control committee would include representatives of all parties at interest in proportion to their interests. This would mean that neither producers nor distributors nor consumers could, theoretically, obtain any decision solely in their interest. The minority dealer interest and the minority producer interest would be represented, but not in a way to halt action unless they could win considerable support from other interests—which they could not do if their position had no merit. It would be hoped that most of the time a full discussion of the issue would lead to an agreement.

Various arrangements are possible for thus combining public and private interests in one local market set-up. One worth considering would be the following:

Two committees, one representing in fair proportion all the producer interests in the market; the other, all the distributor interests in the market, also in fair proportion. The functions of these committees would be to prescribe rules of fair competition, to develop pooling and equalization plans, and to negotiate prices.

An executive to administer the rulings made by the two committees, selected by them subject to approval by the Secretary of Agriculture.

A board of review, consisting wholly of representatives of the public, all without any connection with the milk industry, appointed by some federal or state authority such as a state milk control board, the functions of which board of review would be to arbitrate differences between the two committees, review the prices and other matters arranged between the two committees, and make recommendations to the Secretary as to the same. Such a board should be

authorized to employ a person trained in statistics and economics competent to analyze the current data of production, consumption, receipts, prices of milk and other dairy products in this and other markets, prices of feed and other expense factors, and to present his results to the two committees and the board of review. The board and its analyst should have access to all the needed data. Accountants might also be employed. The board of review would need to meet only at considerable intervals, perhaps once every month or two.

Another possible arrangement would be to have the representatives of dealers, producers, and the public all on one board, somewhat in the proportion of two or three for the dealers, two or three for the producers, and three or five for the public, a representative of the public to be chairman.

Another variant would be to have the representatives of the public each named by one of such local agencies as the county or city medical association, the local organization of welfare agencies, the local federation of women's clubs, the presidents of the local universities and colleges acting jointly, the local bar association, etc.

An interesting possible implication of the foregoing is that whereas the courts of the land might easily declare price fixing for milk unconstitutional if done by an industry board, or illegal if done by a compact of dealers and producers, they might accept it if done by a properly constituted agency or set of agencies in which the public interest was adequately but not exclusively represented and all parties at interest were proportionately represented, as in the foregoing suggested set-up. Being affected with a public interest is a matter of degree. The solution of the milk market problem may lie in creating agencies in which control is in proportion to the degree of public interest.

The principal difference between this last set-up and the

one preceding is that it would provide in the local market itself a body much more competent than some one sitting away off in Washington to establish the merits of the changes asked by the producers and dealers. The Secretary's function would then consist mostly in seeing that the local proposals were in line with the national policy and conditions in other markets.

The usual arguments against having such interests as labor or the consumers represented upon wage or price boards is that they uniformly ask for higher wages, or lower prices, regardless of the merits of the particular case. This probably would not be so true if the case were competently analyzed and the same body of facts and conclusions presented to all parties.

THE PRESENT AAA PROCEDURE

It will be of interest to relate to the foregoing the present operations of the AAA. In a number of milk markets at present under license, the producers' association and the dealers are getting together and negotiating prices as they did before the license was granted, the only differences being that the dealers are no longer theoretically denied the right to bargain as a group, and that any price changes to producers must be approved by the Secretary of Agriculture. This latter difference may not be of great significance since the Secretary is ordinarily not sufficiently informed to render a safe decision. It is true that more information is now currently available for many markets than ever before; that more analyses are being made; and that in addition frequently a man or two is sent into the market and milkshed for several days to interview the various groups, confer with the milk administrator and look over his records, and perhaps take a drive through

the country and note the condition of the pastures. But these sources fall far short of providing the Secretary with the necessary information. They are not enough to enable him to decide which of the contradictory reports made to him by opposing interests in the market has the least overstatement or understatement in it. The hearings conducted in the markets are frequently perfunctory, and they produce very little evidence that does not need to be supplemented. If the present type of control is to be continued, the Secretary needs to establish a current information and analysis service that will enable him to make sound decisions, and make them without the present delays.

This is the point at which to state that the type of control of collective bargaining, or of negotiation with dealers and producers, that is outlined under the marketing agreement section of the Adjustment Act, and that is at present being undertaken by the AAA, represents a relatively new development in economic and political functioning for which there is little precedent in this country.² The distribution of authority between state and industry in the control bodies set up places them part way between public utility commissions and open-price trade associations. Whether the courts will accept such bodies, and what the distribution of powers will finally be in any given case, has been highly uncertain from the start. Possibly the Schechter decision should be interpreted to mean that no function of any kind can be assigned to industry representatives on a board or commission; or that no board or commission having such representatives upon it can have any delegated powers, however definitely they are prescribed. But

² The nearest parallels were the code agreements and the attempts at their enforcement which were provided by the NRA.

this does not seem a necessary interpretation. We can be sure that in any case such powers as fixing of milk prices and production control will not be granted to such agencies without providing some effective public check upon their exercise. If so, then the marketing agreements must surely provide effective public control of collective bargaining.

THE BASES OF CHOICE

The choice between the possible forms and degrees of control set forth in this chapter depends largely upon the objectives of government in this field. Clearly the present AAA procedure is a makeshift which can serve only temporarily. In fact, it has already largely outworn its usefulness in many markets; and lack of vigorous enforcement is by no means the only reason for this outcome. The two collective bargaining set-ups outlined would serve both during the emergency and afterward. Public utility operation is poorly adapted to an emergency situation, as will be made clearer below. This is not a good time for most cities to float bonds for the purchase of milk enterprises. If prices are to be raised to producers, this is not the time to work toward greater freedom and openness of market competition, unless effective production control is provided at the same time.

If the period of control of fluid milk marketing is only a year or two more, simple makeshift arrangements are probably all that are worth the effort. If it is to last four or five years, the answer is different, especially if procedures can be developed that serve with reasonable satisfaction. If marketing set-ups have to be built to serve for that period, we can scarcely afford to scrap them at the end. Forecasting the end of the fluid milk emergency presents many uncertainties. The discussion in earlier chapters

supports the assertion that the emergency in the fluid milk industry will end only when the price of butter, cheese, and other factory products of milk will support a competitive price for fresh milk in cities that is generally acceptable to the reasonably minded among the rank and file of fluid milk shippers. The opinion generally held in the AAA is that dairy product prices, barring another dry summer, will start slipping again after the effects of the last drought have been offset, and that for a period of at least two years thereafter, dairy product supplies will be abundant and prices generally low.

Other points of difference that are important from the point of view of type of control are whether prices are to be raised for milk shippers alone, or for the dairy industry as a whole; and whether distributors, as well as producers, are to be included in the scheme of control. Production control could be arranged by milksheds, the market setting the price, as now for cotton, wheat, corn and hogs, tobacco, etc. This would leave the distributors free to run their own affairs, subject only to such local control as the municipality might impose.³ The present licenses attempt to impose a uniform buying price with a limited amount of control of production but otherwise to leave the distributors to manage their own affairs. A third possibility is to attempt to control the distributors' selling prices, with such other control as must go with this, as was done in the early marketing agreements. Obviously, moreover, the type of control chosen needs to be related to the three alternatives that were considered in the discussions of last winter, as explained in Chapter V; namely, (1) monopoly prices supported by restriction of milk receipts—the so-called restricted market policy, (2) monopoly prices without re-

³ See Chap. XIV for further discussion of this point.

striction of receipts—the so-called “legalistic” policy, or (3) competitive prices, as nearly as possible—the so-called open-market policy.

In the immediate situation, the legal or constitutional status of various forms of control will be highly determinative. Legal aspects are considered in the next chapter, but a few general observations are needed in advance. The legal status of the Capper-Volstead Act has not been established in any fundamental way as yet. Court decisions relative to co-operative membership contracts and collective bargaining have validated these as general procedures; but there have been no cases establishing how much enhancement of price will be accepted as undue, which is the essence of the matter. The only legal questions that would arise in connection with a system of informed wide-open competition would relate to access to the necessary records and information. Should public ownership be attempted, the courts would need to pass upon the use of the right of eminent domain in buying out milk companies, and upon related questions of valuation of such enterprises.

The courts have not yet declared whether the distribution of milk is a business of such nature as to warrant being made a public utility. The existing state statutes simply declare it to be sufficiently affected with a public interest to warrant regulation to the extent indicated in the statutes, especially in view of the current existence of an emergency. The court decisions have not yet covered the public utility aspect. Should milk distributing be declared a public utility, an important question would arise under the due process clause as to whether prices could be set at a level that would force weak distributors out of business.

The legal status of collective bargaining under majority domination was raised with reference to wages by Section

7 (a) of the Recovery Act. Separate court action would be needed to establish its validity when applied to milk prices as distinguished from wages. This same statement covers the last two of the possible forms of control, except that the fact of adequate public supervision and protection of the public, and careful delegation of powers, might have an important bearing upon the finding of the courts. All three of these alternatives essentially involve the question of public price fixing, since a public authority is required to impose and enforce the prices established. The *Nebbia* case may appear to have established the right of a state authority to impose such prices; but the decision was by a five to four vote, and a small difference in the particular situation may warrant a contrary decision in another case.⁴ If Judge Brewster's decision in the Boston case is sustained by the Supreme Court, the AAA will be denied all direct price-fixing power in milk markets.⁵ Even if Judge Brewster's decision is not upheld the recent hot oil case decision suggests that rulings of regulatory authorities must be based upon a sufficient finding of facts, which implies that the incidence of the rulings on the public must be fully examined and recognized.

Considered as continuing lines of action, the form and degree of control chosen depend upon the direction which government in general follows. Several fundamentally conflicting lines of action are represented by the foregoing, ranging from informed and assisted individualism at one end to state socialism at the other, with syndicalism (rule by associations) and various degrees of regulation of both individualism and syndicalism in between. To propose a society operating wholly upon an individualistic basis, or socialistic, or syndicalistic, would be radical indeed. In

⁴ See p. 276.

⁵ See p. 150.

fact, the least radical of these would be state socialism, since the first means anarchism and the last means complete domination by such organizations as labor unions, producers' associations, consumers' co-operatives, etc. Trends of the last few centuries suggest that what we may expect is a mixture of all three economic systems, with all subject to an increasing measure of social control in the public interest. The set-up for any particular line of economic activity or industry depends upon the comparative adaptabilities of the three systems to it, these being determined by trial and error in large part, and giving rise commonly to a trend in that industry. The trend may be shunted off at a new angle at any time as a result of new developments in the world at large or in the particular industry.

Obviously we are still in the stage of trial and error in the fluid milk industry. Informed and assisted competition certainly has not had a sufficient trial as yet. Our experience until recently had been solely with certain weak lines of control of individual dealers and producers and their associations. The associations, especially the producer associations, have been becoming increasingly syndicalistically minded. The Capper-Volstead Act furnished a basis for such associations and also for their control; but the control has as yet been little exercised. The control now exercised by the AAA and the state control boards is not public utility control, although it has some of the aspects of it in the case of the states—price fixing, for example. It is instead merely a form of regulation of individuals and associations, whose status is still highly uncertain.

CHAPTER X

THE APPLICATIONS OF CONTROL

The analysis of public control of milk marketing will not be complete until it has been applied to the various problems considered from a largely economic point of view in Chapters VI, VII, and VIII—to the problems of price and competition, of distribution of returns to producers, of production adjustment, transportation, sanitation, and the like. The present chapter undertakes such further analysis, except for production control, which is reserved for consideration in Chapters XIII and XIV.

Important aspects of the application of public control to these problems are dependent upon the constitutional restraints imposed. The courts have yet to say how far such restraints will impede the control efforts undertaken; and far be it from the intent of the writer to forecast what line the decisions will ultimately follow. Nevertheless, some review of the precedents, and especially of the recent decisions, seems to be a necessary part of the analysis laid out for this chapter.¹

ALTERNATIVES IN MILK PRICE CONTROL

Two major courses of public action are possible with respect to prices in general: one, to work toward holding all prices firm, except for adjustments made necessary by changes in consumption, in supplies of raw materials, in production technology, and the like; the other, to work toward making all prices equally flexible so that their

¹ All of the analysis of constitutional aspects of problems in this chapter was worked out in the first instance by Professor Robert A. Maurer of the Georgetown Law School.

upward and downward movements are parallel in trends, cycles, depressions, and recovery. The decision on this issue far transcends the fluid milk problem, or even the agricultural problem as a whole. Nevertheless, one cannot discuss price policy intelligently even for a single commodity without assuming that one or the other of these courses of action is being followed.

The procedure actually followed since 1929 has been a hopeless confusion of these two. Many industries and many organized interests pursued a program of holding prices steady from 1929 to 1932, and some nearly succeeded in it. On the other hand there can be no doubt that the general level of prices declined severely in these years. The policy of the Administration at the time was to hold certain prices and wages steady and to let others come down except for efforts to check deflation in general. The policy adopted by the new Administration in 1933 was to restore prices, both by manipulating currency and credit and by direct attack on wages and commodity prices. But the actual effort since has been mixed, and in large measure futile. All through the decline of 1929-33, prices of some products or services held firm or nearly so, and are still above the prevailing level.

In the discussion following, the writer will assume that no effective means for holding all prices steady was available in 1929, and certainly none for farm products, and that therefore the only rational course of action with fluid milk prices was to let them come down. Conceivably prices of fluid milk could have been held steady if rigorous measures had been adopted for checking milk receipts and reducing them as consumption declined. But even granting the public wisdom of such a policy, certainly no such control was then possible. As for the period just after

1933, milk prices could have been restored to pre-depression levels only by restricting receipts—and the public certainly was not ready for such a move even if it were desirable. The writer also prefers to make the same assumption for the longer future—the next decade or two—since no prospect confronts us of a government that will be able to manage its currency and credit in general, and to adjust prices of different commodities or groups of commodities, in such a way that a program of holding prices of any commodity steady is to be recommended as good public policy. If a confused general policy like the present one of holding any price steady where possible were adopted, milk prices might be held up, though butter and cheese prices were not, by restriction of shipments; but the arguments in favor of doing so would not be very convincing. It is true that fluid milk producers are somewhat more vulnerable to price hazards than other dairy farmers because more of their costs are cash; but the difference is not great enough to warrant a distinction except possibly in very abnormal times.

In the immediate situation, the Congress of the United States has instructed the AAA to raise the prices of farm products wherever possible whether other prices are raised or not, and its administrators have no choice except to make the effort. At this point the question will not be raised whether such an instruction represented wise national policy. The Administration did have a choice whether or not to apply the instruction to dairy products in general, and to fluid milk in particular, leaving other dairy products largely to themselves. As stated earlier, it has wavered in this matter. A case can be presented that conditions have been sufficiently abnormal on this occasion to justify treating fluid milk as a separate product and

holding up its price by restriction of receipts; but multitudes will not be convinced by it.

If we accept as most promising the general program of making prices as flexible as possible, the essential procedure with respect to prices will take the form of regulating competition. Controlling competition in the milk industry will involve, first, determining what practices are undesirable, and second, developing means of checking them. Some forms of competition between dealers which a majority of them would prohibit, as well as certain types of competition between groups of producers which the majority of them would stamp out, would be useful from a social point of view. The effort would be to stamp out those practices which interfere with obtaining "good" milk prices, that is, prices that keep supply and demand well adjusted to each other at fairly stable levels which change with the general price level. Competition could be said to work badly if it obstructed the attaining of good milk prices thus defined; also if it interfered with greater efficiency in milk distribution or production, by duplicating facilities and services, by encouraging uneconomical production, etc. The principal task would be to keep competition really open, to prevent secret rebates and understandings and rigging of the market, and perhaps to force each dealer to sell according to a posted price schedule. Could these objectives be attained, most of what is in the codes of fair practices proposed in the early marketing agreements could be forgotten.

In control of competition under collective bargaining set-ups, the emphasis would shift toward reviewing and restraining on the one hand the competition between organized and unorganized groups and of organized groups with each other; and, on the other hand, the forms

of concerted action within any of the bargaining groups. Such concerted action has distinct possibilities of defeating the proper objectives of such control.

Under the assumption of a flexible price structure, much of the renewal of competition in milk markets in 1930-33 was desirable, since it served the highly useful function of bringing milk prices into proper relation with other prices, although to most dealers and producer associations all of it looked at the time, and still looks, wholly devastating and objectionable.² Other methods of bringing prices down can possibly be devised that will work more promptly and less destructively; but as milk markets were organized and functioning at the time, no other way for prices to come down was possible.

Involved in this is the further issue of whether at any given time there shall be a fixed price for a given quality of milk, or whether individual sellers shall be free to make their own terms. The answer given to this question by milk producers selling to large dealers is usually very plain—that the individual farmer is weak in bargaining as compared with such dealers, and needs the help of collective bargaining. Producers selling their own milk directly to consumers usually have a contrary answer—in ordinary times they prefer to be free to sell at their own terms. The more efficient of them want to be in a position to cut prices or offer better milk or service for the same price, so as to expand the volume of sales. Many individual farmers—the ones who sell to small dealers and do not join the producer associations—have the same attitude. Should producer-distributors and these independent producers all be forced to sell at the same price as the organized producers?

The answer to this question takes us back to one of the

² See Dr. C. L. King's point of view with respect to it in Appendix D.

basic ideas in our present economic system; namely, that increases in efficiency shall before long come to be shared between producer and consumer and that this sharing shall come about through the pricing process.³ We assume that any one manufacturer or merchant who can reduce his costs below those of his competitors will take advantage of this opportunity to lower his prices enough to increase his sales and reduce his costs still further. We look upon the failure of competition always to work this way as one of the serious shortcomings of our economic system at present. A fixed-price system puts an end to this particular reward of efficiency and the consequent sharing of gains between producer and consumer. Can it secure the equivalent of this in some other way? Perhaps, by weeding out the less efficient through steady public pressure toward lower prices; but experience in other fields indicates that this method does not succeed very well. Suppose that the producer-distributors in a market as a group wish to deliver milk to homes at 10 cents per quart instead of 11 cents and thus increase their sales—will the dealers be willing to accept a price reduction to 10 cents? Suppose an efficient producers' co-operative wishes to deliver milk to hotels, restaurants, and stores at a cent less than formerly so as to expand its sales—will the organized producers selling to dealers accept this price reduction quietly? A negative answer to both these questions is familiar experience in milk markets. Possibly some other procedure can be devised—yet none is in sight at the moment.

Possibly also there are losses from undesirable forms of price cutting unavoidably connected with freedom to undersell that more than offset the advantage named

³ A partial exception to this is the granting of patent rights for a limited period as a stimulus to invention.

above. If so, they have not been clearly pointed out or demonstrated. Mere lowering of retail prices to producers and consumers is not a disadvantage *per se*—in general, it is the goal toward which all economic efforts are aimed. Lowering of prices till they are relatively out of line during a depression may be, it is true, a disadvantage, and probably price cutting achieved this in 1932-33 in some markets. But against this must be set the circumstance that strenuous as the price cutting seemed to be, two years or more passed in most markets before the decline in fluid milk prices came anywhere near to paralleling the decline in butter and cheese prices. If momentum carried prices a little below such a level for a time, this could be accepted as no more than a proper offset for the preceding lag.⁴

The strongest case that can be made for a fixed price for milk is the one that parallels the fixed wage for labor in ordinary collective bargaining contracts—that uniform fixed wages are necessary as a means of defeating the exploitation of employers. This could serve as an economic defense for collectively bargained uniform milk prices; but it would be conclusive only if no better means of preventing dealer exploitation of producers were available.

THE LEGAL BASIS OF PRICE FIXING

The basis of state control of competition is so definitely established in the state police power that space need not be devoted to it. The legal basis of such control by the federal government is in its power to keep interstate commerce free of all sorts of transactions that burden it. Thus in the Packer and Stockyards Control Act, charges for

⁴ Dr. Leland Spencer's figures indicate that prices for fluid milk (Class I) in the 201-10 mile zone in the New York market were still 58 cents above the value of milk for butter in April 1933. (Address at Farm and Home Week, Ithaca, Feb. 12, 1935.) This 58 cents covered costs of meeting inspection, value of skim milk, and cost of haul from the nearest competing butter area.

marketing services are controlled on the theory that they may impede the interstate flow of commodities. The interpretations which the courts have given this power in the past have made it cover not only charges for services, but also price discriminations that lessen competition or tend to produce monopolies in commerce; making or giving any undue or unreasonable preference or advantage in commerce to any particular person or locality; selling or buying for the purpose or with the effect of apportioning the supply so as to restrain commerce; manipulating or controlling prices in commerce; creating monopoly prices in commerce; and speculation that results in sudden or unreasonable fluctuations in price detrimental to the public and conducive to obstruction of and a burden upon interstate commerce.

The legal basis for regulating competition and price fixing must, however, be considered separately. As pointed out earlier, a different set of conditions than prevailed in New York might lead the Supreme Court to a different decision.⁵ Indeed it would almost seem that a different analysis of a very similar situation might lead to a different finding. The following from the *Nebbia* decision is significant: "In the light of the facts, the order appears not unreasonable or arbitrary, or without relation to the purpose to prevent ruthless competition from destroying the wholesale price structures on which the farmer depends for his livelihood and the community for an assured supply of milk."⁶ Suppose that in another case the showing of facts is to the effect that the "wholesale price structure" has merely been brought into normal relation with prices of milk utilized in butter and cheese, that these prices keep in a certain relation with each other in the

⁵ See p. 267.

⁶ 291 U. S. 502, 1934.

absence of monopoly action by producers or dealers, or both, and that no ruthless competition is present in the butter and cheese market, but just the ordinary competitive forces in any free market—how then will the Supreme Court rule? Surely it will not say that price fixing is warranted whenever prices of any product are temporarily below cost of production. Then the showing of facts must be to the effect that producers somewhere within easy reach of the market cannot afford to supply continuously the milk which the consumers need at less than the prices fixed.

The AAA has apparently avoided bringing any case to court revoking the right of an individual producer-distributor to sell under the license price. The Supreme Court might easily find such a situation, or a situation involving the right of a producer's co-operative to sell for other than a fixed price, to be different from the *Nebbia* case.

A significant feature of the *Nebbia* ruling is that although the New York Control Board law is an emergency law, the decision was not made to hinge on an emergency condition in the industry. The decision would thus seem to mean that the government can fix milk prices whenever destructive competition lowers prices to such a point as to make it impossible for producers to keep up the milk supply.⁷ Apparently, also, the issue of whether a business is "affected with a public interest" has ceased to be of importance. Says the court: "... there is no closed category of businesses affected with a public interest, and the functions of courts in the application of the Fifth and Four-

⁷ Judge Brewster's statement in the Boston case is significant: "I do not believe that *Nebbia v. New York* entirely overthrows earlier established principles, nor do I regard it as decisive in the instant case." He holds that only the special conditions prevailing "in an emergency created by economic conditions" justified that decision.

teenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exercise of governmental authority or condemn it as arbitrary or discriminating."⁸

The purposes of the Agricultural Adjustment Act with respect to prices, however, have a rather indirect, even remote, relation to the interstate commerce aspect of agriculture. Up to this time it has never been held by the Supreme Court that Congress has power to fix prices of interstate sales for the purpose of insuring the seller producer more than he would otherwise receive. In the Adjustment Act an attempt is made to justify such power on the grounds that the low prices of farm products have "broken down the orderly exchange of commodities" and have "burdened and obstructed the normal currents of commerce in such commodities." Obviously if the courts accept such an interpretation of the interstate commerce power as a normal situation, there is little to prevent the complete subordination of state legislative power over industry.⁹ There is much to suggest that the courts will sanction it if at all only so long as the price situation is so abnormal as possibly to obstruct interstate trade; and

⁸ The same.

⁹ The following from Judge Chestnut's opinion in *Royal Farms, Inc. v. Wallace*, Nov. 16, 1934, 8 Fed. Supp. 403, is pertinent:

"To the extent that the fixing of prices of commodities moved in interstate commerce may be reasonably necessary to protect the freedom of the movement, it would seem clear enough that Congress would have the power to fix such prices. But it is somewhat difficult to conceive a case in which fixing prices of the commodities themselves moved in interstate commerce would be deemed reasonably necessary as an incident of the exercise of the power to regulate interstate commerce therein. At least no such act has been called to my attention. It may also be suggested that assuming the existence of the power, it is of such an important nature and so vitally affects the individual's general right of freedom of contract that if Congress had intended to give the power to the Secretary it would have been definitely expressed rather than left to uncertain implication by the use of such a general phrase as the 'elimination of unfair charges.'"

they may properly question even whether prices of farm products in these abnormal times have really interfered with such trade by reducing its volume or otherwise.¹⁰

The new amendments to the Adjustment Act proceed on the assumption that the Supreme Court will accept price fixing as necessary to protect the freedom of interstate commerce if the Congress so declares. The Adjustment Administration apparently considers that the chances for such a decision are good enough, and the need for it so great, that it cannot afford not to gamble upon it.

The report of the Senate Committee on Agriculture and Forestry on the recent amendments (H. R. 8942) contains (page 10) the following attempt at legal substantiation of the price-fixing provision:

The validity of state legislation fixing minimum prices at which milk may be purchased from producers was sustained in *Nebbia v. New York* (291 U. S. 502), and *Hegeman Farms Corporation v. Baldwin* (293 U. S. 163) against an attack upon the ground that such legislation violated the due-process clause of the Fourteenth Amendment. Since the requirements of due process under the Fourteenth Amendment and under the Fifth Amendment are identical (*Heiner v. Donnan*, 285 U. S. 312, 326), the price-fixing provisions authorized to be included in orders issued under the proposed Section 8(c) conform to the requirements of due process under the Fifth Amendment. That regulations fixing the price at which an agricultural commodity may be purchased are proper exercises of the federal power over interstate commerce is established by such decisions as *Lemke v. Farmers' Grain Co.* (258 U. S. 50) and *Baldwin v. Seelig* (55 Sup. Ct. Rep. 497).

The comments in order are that legists do not generally consider the Lemke case as validating price fixing in inter-

¹⁰ Judge Brewster cited approvingly Judge Chestnut's statement, and added: "It does not follow that because a state may have, in the stress of emergency, police power to regulate a business essentially private in its character, that the national government, under the commerce clause, has the same power. One is exercising a granted power, and the other a reserved power. They are not to be measured by the same yardstick.

state commerce for the purposes defined in the *Adjustment Act*; and that reading such an interpretation into the *Baldwin v. Seelig* case is difficult. Judge Brewster apparently thought this case had no bearing on the problem in hand.

Attorneys in the AAA have argued that the failure of dealers to pay for milk according to its use and the season in which it is produced represents the same order of interference with pricing processes as has been legislated against in grain markets, and that the courts have sustained this legislation. However, it is easily shown that any one milk dealer can be required to pay his particular producers according to use and season without compelling all dealers to pay the same set of prices; likewise to equalize returns with other dealers in so far as this is valid.

Another possible legal approach to control of prices of milk in interstate commerce is on the ground that existing agencies are exercising monopoly control. The producer associations, of course, would not offer such an argument, and the AAA could scarcely afford to do so; but the public may find this approach useful in the future. Court decisions have approved of control of prices when monopoly exists in interstate commerce.

Another possible approach is in terms of federal regulation of public utilities engaged in interstate commerce. Thus far there has been no attempt to regulate either the purchase or sale prices of commodities moving in interstate trade. Regulation of charges has been confined to services. Electric power and natural gas have been considered interstate so far as sales at wholesale are concerned, but they have been held to be subject to state control where the power or pressure are stepped down at the end of interstate movement for purposes of local distribution to consumers.

Another legal issue is the extent to which, and the manner in which, the price-fixing power can be vested in local agencies in the various markets, granted that it is conceded to a state. First, can a public authority be permitted to enforce prices arrived at by collective bargaining between producers' association and dealers? If so, this means that the determinations of men acting in a purely private capacity are given legislative sanction by anticipation. Fixing of prices for the future is a legislative function, often described as quasi-legislative, and may be delegated to administrative agencies only subject to statutory limitations which the legislature itself prescribes. Therefore it may be truthfully said that it is the legislative will which the administrative agency is actually carrying out, and not the will of the administrators. However, if a discretionary authority were vested in the "public authority" under defined statutory general rules, there would be no objection to an arrangement under which the producers and dealers submit facts and recommendations in an advisory capacity. The conclusions and the requirements as to price would have to emanate from public authority in order to have the force of law and be taken as the legal basis for enforcement proceedings. Such is the practice under the present flexible tariff law, approved by the Supreme Court. The Federal Tariff Commission finds facts relative to the differences of costs of production at home and abroad and makes recommendations to the President. He acts under a statutory authority to modify tariff rates.¹¹

The recent Schechter decision supports the foregoing analysis. Doubtless the local control agencies set up in the early marketing agreements would have been ruled out

¹¹ This statement was made as here written by Professor Maurer in January 1935. The Schechter decision does not call for the slightest modification of it.

by the Supreme Court. The agencies set up under the new amendments may or may not be acceptable to it. The terms under which the delegation of powers is made to the Secretary of Agriculture may not be considered definite enough; the powers conferred by the Secretary upon the local agencies may be considered excessive; or the local agencies may be considered as comprised too largely of private interests. However, some other form of local agency, more nearly in the nature of a public utility commission, might be acceptable to the Supreme Court. Whether any form of set-up can be devised which will be acceptable both to the Court and to the private interests in local milk markets remains to be seen.

PUBLIC PRICE DETERMINATION

If public agencies are to establish or control prices, they must accept some economic bases for such prices. These bases are the same whether the public agency actually designates a price or merely reviews and accepts or disapproves of a price arranged by some agency such as a local milk board. If the reviewing agency really functions, it will need to carry through the same analyses as though it had actually named the price in the first instance. Public price fixing must follow the same lines and rest on the same set of facts and principles whether it is done by a public utility commission or some other price-fixing body such as may evolve presently out of the marketing agreements defined in the Agricultural Adjustment Act, or out of the present state milk control boards. The prices being fixed by these agencies at present are accepted for the most part, it is true, without support of the full fact-finding processes usually employed by commissions; but this is merely on the plea of an emergency, and only for the

duration of the emergency. Moreover, the courts at any time may refuse to accept even this basis for them.

Theories of public prices or rates have had a long history of development in the public utility field. They can be applied to milk prices only with considerable adaptation. The generally accepted basis for public utility prices, a rate of return upon the investment that will attract the necessary capital into the business, could be applied to milk distribution without change if the number of distributors were reduced to one—except that the allowances for historical cost, reproduction cost, depreciation, obsolescence, idle equipment, good-will, and the like would need to take account of the special conditions in the industry. If the plan were followed of giving permits to two or three distributors in any city block, the decisions on some of these matters—idle equipment and good-will, for example—might be different; and there would be important details to settle as to the closing out of the low-volume distributors in any block and transferring their interests to others. The commission might rule, for example, that no dealer could continue selling less than 50 units in a normal city block and must exchange a smaller number of units in a block with other distributors for their interests in territory where he was strong, or accept a good-will allowance of so much per unit from the distributor getting his business.

The really difficult questions would arise if the commission were to follow the plan of regulating prices for the existing distributing system. If it provided margins adequate to insure expenses for the least efficient one-third, let us say, it would allow abnormal profits for the more efficient and, in general, the larger distributors. The returns assured would be larger than necessary to attract

needed capital; and so large as to attract new distributors, particularly producer-distributors, in many markets, and to bring down an avalanche of public criticism. Yet reducing margins to the point of forcing out of business a third of the distributors is a bold undertaking for a public agency dependent upon votes for its continuance.

Issues would also arise over the relative prices of milk of different grades and of milk and cream and other products handled, wholesale and retail prices, prices to stores and to hotels and restaurants, and store and wagon prices. No manner of accounting or valuation procedure can really settle these questions any more than it can settle differences between railway freight and passenger rates, railway tariffs on different classes of commodities, and the like. The principle of charging what the traffic will bear is bound to figure largely in such determinations; and several other principles besides. The cost-accounting results themselves would differ according to the choice between various arbitrary systems of allocation, such as might be employed in dividing the wages of the wagon drivers between the milk and cream delivered.

A price-fixing body operating in this field might well consider adopting the short-cut of establishing certain accepted margins per unit above current operating expenses—these margins being such as to maintain the necessary plants and equipments in the long run and to provide such return to management as proved necessary—and adjusting the schedule of resale prices at such level as to give the average distributor this margin.

Wherever such price fixing is undertaken, many milk producers are likely to demand that prices to them be based upon their costs of producing milk, rather than on the basis of competitive bidding as suggested above. Costs

of producing milk cannot be really determined by accounting procedure. Figures can of course be calculated by arbitrarily differentiating the rates per hour for man labor on the dairy herd (largely performed when no other work is available and by proprietor and family labor) from the rates per hour on regular field work in summer; by arbitrarily distinguishing between the rents on pasture land and crop land; and by arbitrarily assigning by-product credit for skim milk and manure. But the cost figures thus calculated are exactly as arbitrary as the differentiations made. They are essentially assumed. They vary according to whatever basis is taken for the assumptions. Costs calculated for a major dairy area in Minnesota by the State Experiment Station and the United States Tariff Commission differed by 15 cents per pound of butter because the assumptions differed. The assumptions most often made by those who still try to estimate the total cost of milk production almost invariably give figures which are too high. Even the lower of the two figures for the Minnesota area was just a trifle above the average price received by farmers in the area. This implied that nearly half of the farmers were producing at a loss. In most of such cost determinations in more normal times, two-thirds or more of the dairymen are made to appear to be producing at a loss, even while all other evidence, such as increase in dairy output, and paying off of mortgages, indicates reasonable prosperity. At the very time of the Minnesota study, herds were being enlarged and the dairy industry was expanding in the area.

Hence a public utility commission which employed unit production cost data of the sort commonly calculated even as part of the basis for the price to producers—and from past experience we may be sure that majority groups of

dairymen in many milksheds would demand use of such data—would find itself setting up prices that would shortly flood the market with milk. Its only escape would be to lower the price, which would arouse vigorous protests; or to set up monopoly restrictions on milk receipts, which would be absolutely foreign to all accepted public utility theory and practice. In practice, if the earnings of a public utility enterprise are so low that it cannot borrow the money required for needed expansion or improvements to meet public needs, then the commission is willing to raise the rates; but only under circumstances of this sort. If the same principle were applied to the business of producing milk, as long as milk receipts kept up with consumption no case for higher prices would stand up. Argument might be made that production would presently begin to decline if an increase were not granted, but this argument would not be taken seriously a second time unless experience the first time indicated its validity. Very shortly the commission would be on the basis of adjusting rates according to evidence of need in order to maintain milk receipts. Obviously, therefore, only by accepting a wholly new principle of action, namely, restricting receipts in order to sustain a price higher than needed to bring in the necessary milk supply, could a milk commission establish milk prices such as milk producers are likely to demand, and even appear to justify, on the basis of the cost of production figures that are likely to be concocted for them.

An added complication implied in several places in the foregoing discussion is that such a commission would need to decide whose costs and whose production are to be taken in passing upon the reasonableness of milk prices. If the average producer were taken, approximately half

of the producers would be operating at a loss—literally many thousands of producers, all of whom would insist that their property was being confiscated. This problem does not arise conspicuously in most public utility cases, since only one company is involved, or at the most, a few very similar ones. If the marginal producers were taken as a basis, or even the so-called bulk-line producers, then the majority would profit excessively, expand their production, and break down the price.

It is clear that a genuine public utility approach is not consistent with the emergency objectives of the present agricultural legislation. The first and primary objective of all the activities of our federal government with respect to milk has been to raise its price to the producers. This parallels similar objectives, already realized, for wheat, cotton, corn and hogs, and tobacco. Accomplishing such objectives has involved the use of monopoly methods, consisting, in the case of wheat and cotton, of restricting the supply; in the case of tobacco and rice, of negotiating agreements with dealers and processors, plus restricting the supply. It should be obvious that the whole tradition of public utilities is against setting up monopoly prices sustained by restriction of output. Perhaps this tradition could be departed from temporarily; but such a step should never be taken as a matter of general public policy. The framers of the Agricultural Adjustment Act recognized this fact, albeit none too clearly. Accordingly they created a special arrangement to implement the price-raising objective; namely, the allotments and processing taxes on the one hand and the marketing agreement and supporting license on the other. The monopoly prerogatives associated with these agreements were specifically stated.

Public regulation of prices, whether by a genuine public

utility commission or any other type of price-making body, may be questioned on the score of its effectiveness. In general, public utility rates have adjusted themselves slowly to changing conditions. They lagged greatly from 1916 to 1918, as well as after 1920. Surely they subsided as slowly from 1930 to 1933 as did collectively bargained milk prices. In the case of milk, however, prices of other dairy products and of other farm products are always available for direct comparisons, and producers' responses to prices will serve as a further guide, so that any ordinary commission should be able to make the producer price adjustments needed. More difficult will be the prices to consumers, since these will determine the distributor's gross margin, and affect the wages paid plant labor, truck drivers, and delivery men.

RESALE PRICES

The answer to the question whether resale as well as producer prices should be fixed depends like those just discussed upon the objectives and the form of public control. The early marketing agreements took over the practice of changing consumers' prices whole cents at a time. Changes of this magnitude in the retail price cannot very well be made with no regard to prices to producers; nor on this basis can producers' prices be changed without regard to retail prices. Nevertheless in its later policy the AAA looked more particularly to the reasonableness of the price to the farmers and placed upon the distributors the responsibility of seeing that resale prices gave them sufficient operating margins. The common statement concerning this policy is that the Adjustment Act was established to get better prices for the farmer and that it does not concern itself with the income of the milk dealers.

It is also commonly stated that the fixing of prices to farmers is of benefit to the dealers in that it removes one of the forms of unfair price cutting with which they have had to contend—that if the price to farmers is uniformly enforced, dealers all start with the same buying price. The distributors' reply to this is that in the past they have frequently been able to meet the rigors of competition in the resale market by certain adjustments in their buying prices. Since these are no longer possible, some distributors are finding themselves unable to meet the competition in retail prices.

This policy is causing disturbance in many markets. Price changes are blocked at times because dealers cannot get together on resale prices, and producers' associations then become concerned because some of their contracting dealers are unable to pay for their milk. At times it is the unwillingness of some of the dealers that stands in the way of the price change; at times it is a general realization that the increase sought, with no increase to producers, will give dealers preposterously high profits. Continuation of this policy may well lead to unnecessarily high dealers' margins. We can therefore expect some changes in this phase of price control. One form of change already under way, as indicated on page 125, consists of letting the state control board fix resale prices and try to enforce them.

This statement must not be taken as a condemnation of the move to abandon resale price fixing at the time it was made or in the future. The situation in December 1933 probably called for such action. This situation will continue for the AAA until the enforcement problem is solved and control methods are better formulated, if not indefinitely.

In case federal milk control continues, future policy as to resale prices will depend upon the form of control. Under full public utility control, prices to consumers and producers and dealers' margins could probably be expressed in decimal fractions of cents, as are gas rates, and hence could be readily adjusted to changes in each other. Producers' prices, it surely has been made clear, cannot get much out of line with prices of competing products without causing trouble. They must therefore serve as the starting point in building up the schedule. With any collective bargaining system, the dealers and producers' associations are likely, for a time at least, to want to retain their practice of changing retail prices by a whole cent. In this case the task of any public authority responsible for resale prices also will be to see that the dealers' margins, although varying from month to month, combine into a certain yearly average that has been found to be reasonable. If the public authority decides to fix only producer prices, as may well prove to be wise, the dealers in any market may find it necessary to set up a code of fair practices composed of such articles as are consistent with the Federal Trade Commission's definitions of fair and unfair competition (or those of a parallel state authority), and to develop methods of securing obedience that are acceptable to the Trade Commission.

Other aspects of the question are covered in the following statement by Dr. Leland Spencer:

The theory has been that if all dealers were placed on an equal footing as to the purchase price of milk, resale prices might well be left to competition. It was expected that the least efficient dealers might drop out, and that this would contribute to the economy of distribution and a smaller spread. But the results do not conform to this theory.

The situation is complicated by the existence of certain types of dealers that apparently can survive indefinitely, even though the spread between fixed producer prices and competitive resale prices is insufficient to sustain other very efficient dealers. For example, chain grocery stores are affected only slightly by the spread on milk and cream, because these items constitute only a small proportion of their business. There are other milk dealers who derive a large share of their income from ice cream, or from sales outside the territory affected by the license. In some markets, too, large milk distribution enterprises are operated by farmers' co-operative associations. It has been the policy of such associations to return to their members the net proceeds of sales after deducting the expenses of operations. If this policy is continued, the co-operatives are not placed on an equal footing with distributors who are subject to fixed purchase prices under the licenses. Producer-dealers are in a similar position. Obviously some very efficient proprietary distributors might fare badly when required to pay a fixed price for milk but with no protection in respect to resale prices.

Again, there are a few well situated companies that have accumulated large reserves and may outlast competitors who are now more efficient. Finally, unless the state and federal licenses are enforced much more effectively than thus far, there will be, among the survivors of the competitive struggle under inadequate spreads, a considerable number of irresponsible dealers, who have been most successful in defrauding on weights and tests, or by non-payment of bills.

If ways are found to overcome these tendencies toward survival of the less efficient, the result will be to greatly encourage the trend toward monopoly in the distribution of milk. In fact, even partial enforcement of milk prices with an adequate spread for dealers is having this tendency. It tends to wipe out some distributors who are of sufficient importance to have a reputation at stake and who have higher costs or less reserves or are more dependent on the income from sales of milk and cream in the particular market. It is by no means certain that the efficiency of distribution will be enhanced or the spread ultimately reduced by these developments.¹²

¹² *Farm and Home Week*, Ithaca, N. Y., Feb. 12, 1935. By the term "monopoly" in the last paragraph, Dr. Spencer apparently means simply the concentration of distributing in fewer hands.

A system of posted resale price schedules, to which each dealer is required to conform until he publicly changes them, has possibilities worth testing. Its success will probably require firm support by the dealers. It would seem that any important dealer who really wanted to break such a system could do so in spite of any rules that could be prescribed.

CONTROL OF DISTRIBUTION OF RETURNS TO PRODUCERS

The legal basis of equalization of returns would seem to have been firmly established in the *Nebbia* decision in the following language:

The fluid milk industry is affected by factors of instability peculiar to itself which call for special methods of control. Under the best practicable adjustment of supply to demand the industry must carry a surplus of about 20 per cent because milk, an essential food, must be available as demanded by consumers every day in the year, and demand and supply vary from day to day and according to the season; but milk is perishable and cannot be stored. Close adjustment of supply to demand is hindered by several factors difficult to control. Thus surplus milk presents a serious problem, as the prices which can be realized for it for other uses are much less than those obtainable for milk sold for consumption in fluid form, or as cream. A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milkshed. So long as the surplus burden is unequally distributed the pressure to market surplus in fluid form will be a serious disturbing factor. The fact that the larger distributors find it necessary to carry large quantities of surplus milk, while the smaller distributors do not, leads to price cutting and other forms of destructive competition. Small distributors, who take no responsibility for the surplus, by purchasing their milk at the blended prices (i. e., an average between the price paid the producer for milk for sale as fluid milk, and the lower surplus milk price paid by the larger organizations) can undersell the larger distributors.

Indulgence in this price cutting often compels the larger dealer to cut the price, to his own and the producer's detriment.¹⁸

This very statement of the case, however, makes extremely pertinent the showing of facts in any particular case. It may have been true in the New York area in question that "the prices which can be realized for it [surplus milk] for other uses are much less than those obtainable for milk sold for consumption in fluid form or as cream." But this surely is not true in normal times in markets not on a monopoly basis, if one is speaking of milk in excess of the supply needed as reserve and in terms of net prices after transportation costs are deducted and sufficient allowance is made for differences in sanitation requirements, value of skim milk, etc. For the 20 per cent mentioned as a necessary "surplus," in so far as it must be shipped as milk, it is true that the net Class II price would be lower; but this is a limited amount of milk and, subject to certain qualifications, it is not generally in a position to upset the market greatly, particularly since all dealers must provide about equally for it. It is the excess over this 20 per cent that is used in "destructive" price cutting; and for the most part this need not come to market as fluid milk. In fact, in a free market separated from all forms of monopoly control, it usually does not come to market in this form.

These three last statements are made guardedly because the actual conditions in any milk market may invalidate them. For example, if in one section of a milkshed the excess of a good many producers is too small to be disposed of in any way except as fluid milk, and the aggregate volume of the section is insufficient to warrant provision for processing, Class II milk may come to market in suffi-

¹⁸ 291 U. S. 517.

cient quantity to cause some undesirable price cutting. Or milk production may vary enough from year to year so that herds needed to furnish consumption plus reserves one year may produce an excess of 5 or 10 per cent the following year, and yet the situation may not warrant special arrangements for keeping the surplus from being shipped as milk. In a period of declining consumption, the effect of all the special circumstances is likely to be augmented. Over short periods, individual dealers may not be affected alike by such circumstances as these, and some may be in a position to undersell and bid for more customers. Such special market conditions as these may furnish an adequate factual basis for such a statement as quoted here from the Nebbia decision; but the probability is to the contrary, except in an emergency period.

The further finding of fact in this case, that large distributors must carry larger surpluses than small ones, is again contrary to the essential facts in many other markets, or has its basis in a form of monopoly which the courts would not consciously sustain. It is true that the large distributors do carry larger surpluses than the small ones, but it is frequently because the smaller distributors have chosen to buy from producers with more even production, or because they contract on a basis of taking only such milk as they need for fluid sales and day-to-day reserves. It is improper to say of most markets that these dealers take no responsibility for the surplus. They commonly buy from producers who assume responsibility for the surplus, either by not producing it or by otherwise disposing of it, and pay these producers a higher price accordingly. It is true that this price may not be as much higher as it should be; but there are other reasons why this may be so. The producer associations may not pay

the nearby producers equitable returns, and the producers may remain outside of the associations and seek better returns from the small dealers, or become producer-distributors; or there may be such a large spread between Class I and Class II prices that some dealers have a chance to buy from more distant producers at a bargain.

Another reason for the larger surpluses carried by the large dealers is that many of them have made the receiving and processing of an additional supply of milk an important part of their businesses. They are not in the least burdened by this milk or surely they would not be buying it in as large quantities as possible.

In many other instances the large dealers are carrying larger surpluses because they have chosen to contract with milk producers' associations who have acquired control of a large volume of surplus milk through their efforts to include all possible competing supplies so as to dominate the market and push prices toward monopolistic levels. These somewhat monopolistic prices, as explained on page 239, are sometimes a factor in further building up these surpluses. *More fundamentally, it is the power which control of a large fraction of the milk supply gives, that forces the larger dealers to contract with the associations and agree to carry their surpluses.* The Supreme Court in the language above cited has thus in effect underwritten, unwittingly let us hope, such an exercise of monopoly power. Its statement is general, not limited to the New York market. So far as actual quantity of milk needed as reserve is concerned, large distributors need a smaller percentage of their volume than small ones, simply because of the wider spreading of the effect of variation. On the other hand, in practice, small dealers can more easily pick up milk to meet their small individual short-

ages than can large dealers their larger absolute deficits.

Even though the statement of facts on which the Nebbia decision was based may not all have been correct, or may not fit other markets, other facts can be brought forth that seem to warrant legal approval of any plan of base ratings and equalization that is reasonable. This follows from a reading of the Nebbia decision and in particular from the general pronouncement of the court that "a satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milkshed." The nature of these facts and of the appropriate ratings and equalization is made clear in Chapter VII. Obviously the details of any plan for carrying out such equalization must not be arbitrarily or capriciously selected. They must bear reasonably upon the purposes sought to be accomplished. Furthermore, they must operate equally upon all in the same class, condition, or circumstance. In the administration of the plans, due process of law requires that those whose rights are affected shall have opportunity to be heard at some stage of the administration and enforcement of the regulation. Administration must remain within the statutory limitations set out. All arbitrary action clearly beyond the law and the facts is prohibited.

These statements indicate the legal requirements governing the exercise of intrastate police power. The same requirements would apply under federal regulation. Federal power along these lines should extend as far as the price-fixing power to which it is related, and also as far as the control of competition in the interest of preventing unfair trade practices.

The foregoing statement is made in the face of Judge Barnes' decision in the Chicago case, and Judge Brewster's

more recent decision that base-rating plans are production control devices. The writer believes that they can be presented to a higher court in their true form as devices for distributing returns equitably to producers and receive a favorable opinion. Should closed bases be imposed on a market, however, the courts could easily rule otherwise. Plans for equalization of returns should also receive higher court approval *provided they are equitable*. Judge Brewster made its equalization plan one ground for ruling against the Boston license. He said: "Again, by its terms, the license compels the distributor, against his will, to share his profits with other distributors." The writer would say either that the Boston license sets up an inequitable plan of equalization or that Judge Brewster has failed to see it in its true form.¹⁴

The arrangements for control of distribution of returns to producers will depend largely upon the general type of control of the industry. The present controls under the Adjustment Act, which have already made distributions more equitable than they were in many markets, are adequate to accomplish the ends desired if the allocation procedures can be revised as indicated in Chapter VIII, and if sufficient enforcement can be attained. The allocations outlined in the early marketing agreements

¹⁴ See p. 196. It is interesting to note that the first sentence from the following paragraph of the report of the Senate Committee on Agriculture and Forestry sustains the contention of Judge Barnes and Judge Brewster that base-rating plans are production control:

"In order to eliminate, so far as possible, violent seasonal fluctuations in the available milk supply with their attendant disturbing effect upon returns to producers, and to encourage a uniform volume of production throughout the year, an adjustment in payments to producers upon the basis of their production records during a representative period may be included in such orders, in addition to the adjustments described above. Milk orders may also provide a method for adjustments among handlers so that the payments for milk made by each handler shall equal the value of the milk to the handler in the use classification to which it is devoted by him."

especially, and in the present licenses in some measure, have not been as equitable as need be; but local influences are in part responsible for this shortcoming. The refusal of many small dealers and producer-distributors to share in pools and to contribute to equalization funds has been in part due to these inequities.

Control of the distribution of returns for a whole market area by collective bargaining set-ups would furnish the majority groups an opportunity to impose systems of allocation wholly according to their interests, whereas clearly each should be compensated according to his own production and location. Effective public control of allocations between different co-operative groups, or co-operatives and non-members, is therefore highly necessary. Reconciliations between members of any one co-operative are probably best left to the co-operatives; however, the government should not only be prepared to act as mediator between factions, but should undertake to educate producers and co-operative officials as to the essentials of equitable allocation. Possibly marketing agreements should have provisions making government mediation compulsory under certain circumstances.

A great advantage of a public utility or public operation plan is that the returns could be adjusted according to more nearly equitable procedures. Except in one or two details, there is general agreement among students of the problem as to what these equitable procedures are, and there need be no long argument on these points.

If a system of wide-open competition were established in any market, it might take the form of separate bidding for Class I, Class II, and Class III milk and public checking of producers' returns to see that they were paid according to use. This could be supported by fees paid by

the contracting parties, as are inspection fees generally. Producers would not ordinarily ship Class II milk as milk, unless they received butterfat prices for it plus transportation costs, value of skim milk, etc. This plan, however, would not cause dealers to pay producers with an even milk supply any higher prices in any month than irregular producers, unless, as suggested earlier, the bidding could be done in terms of annual contracts to deliver according to specified schedules with allowances for excesses and deficits.

If the milk markets are returned to the condition of control existing before the Adjustment Act was passed, co-operatives will be able to retain any previously adopted system of pooling or base rating with equalization of returns, and any dealer buying from non-members will have the same privilege. Whether the system can stand competition with flat-price buying from non-members will depend upon whether the ratings are equitably assigned. In view of the many serious mistakes made in attempts at equalization and of the serious inequities in base allocations between individual members, it is to be doubted whether experience with base ratings and equalization under agreements and licenses has won enough support for them to insure their continuance in a good many markets. Yet without these or their equivalent, there may be serious inequities in the return which many producers receive for their delivered milk, and probably a significant amount of unfairness in competition between dealers in buying milk, with considerable disturbance in the market as a result.

So far as the co-operatives are concerned, they would be left to solve their own internal problems of allocation. The usual systems of payment to non-members would fur-

nish the kind of competition needed to induce co-operatives to raise the base ratings of nearby producers to a proper level, and they probably would gradually learn the other adjustments needed. But it might take a long time, in view of the great voting power of the more distant producers, and of the prevailing tendency for some organizations to be dominated by inner cliques which perpetuate themselves. Also, whenever the Class I price was raised to a slightly monopolistic level, additional producers near the outer rim of the milkshed would wish to ship milk and might force larger ratings for themselves than they could rightfully claim.

The present general tendency of control of distribution of returns under federal licenses is along the lines of Dr. Leland Spencer's highly significant recommendation that the New York Control Board exclude producer-distributors and possibly even small dealers from such control, partly in order to simplify enforcement, but also in recognition of the fact that many of them in effect carry their share of surpluses.¹⁵

The new amendments would seem to make equaliza-

¹⁵ "Not least important among the reasons for failure to secure satisfactory enforcement of producer prices is the attempt to require the use of the classified price plan by all dealers, regardless of the size or nature of their business or their previous methods of purchase. Some 4,000 dealers are under license by the Division of Milk Control, including approximately 1,800 producer-dealers. There are about 1,200 dealers who buy milk from farmers, and of these about 950 are doing business in upstate cities only. It is on the payments by the dealers who buy directly from farmers that enforcement efforts should be focused.

"The problem of auditing dealers' payments for milk has been simplified considerably by the provision that those handling less than 50 cans of milk a day shall pay for not less than 75 per cent of them at the Class I price and for the remainder at the cream price. This reduces to something like 250 to 300 the number of dealers who are buying from farmers and who are privileged to use the nine-point classification plan without limitation. Even so, effective auditing of the monthly payments for milk is an enormous task on which scarcely a beginning has been made." *Statement at Farm and Home Week, Ithaca, Feb. 12, 1935.*

tion, either by single dealers or for the market as a whole, almost mandatory in any marketing agreement—but to permit the former only if it is favored by three-fourths of the producers. No doubt, however, the exigencies of conditions in individual markets will lead to many variants from these two prescriptions.

Section 5 (b) of the recent amendments to the Adjustment Act defines the differentials in a market in the following manner:

... subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk *purchased* by any handler, or by all handlers, among producers and associations of producers, on the basis of their production of milk during a representative period of time.

These differentials are explained as follows (page 10) in the report of the Senate Committee on Agriculture and Forestry:

Minimum prices fixed in such orders are required to be uniform as to all handlers, subject to adjustments for differences in the grade or quality of the milk delivered, for differences in transportation costs from the place at which delivery is made to the handler or the distributing or processing plant, and for volume, market, and production differentials customarily applied by handlers. The volume differential is a differential which is paid when the operations of several country plants are consolidated into one plant. The inconvenience which is caused to producers by closing up plants to which they have been delivering and requiring that all of their milk be handled by one plant, is compensated by an additional payment to the producers. The production differential is the differential which is paid to a producer, to compensate him for keeping his farm and milk qualified for a city market even though his milk may actually be going into manufactured use. It is necessary to

keep this supply of reserve milk available for periods in which consumption of fluid milk goes up. The effect is that the producers are paid for keeping their farms in the same condition as if they were shipping milk into the city every day. The production differential is a payment to the farmer for performing this function in the market. The market differential is a differential which is given to the producer to compensate him for delivering his milk to a city market instead of to a country plant. These differentials vary with the markets and cannot be qualified as a "location" differential, because of the fact that location is usually determined on the distance from a primary market whereas market differentials are usually paid in secondary markets.

The volume differential mentioned has been discussed in this book only in connection with local hauling costs. The larger the volume handled at a country plant, density of production being the same, the higher the local hauling costs but the lower the local plant costs. The hauling costs vary more than the plant costs. The language of the amendments themselves is broad enough so that the differential for location can be greater than the difference in transportation cost.

CONTROL OF TRANSPORTATION

Earlier discussion has shown the need for introducing order into the business of transporting milk from the farm to the city, especially by truck. Some co-operative associations have been able to accomplish this in part by negotiations with dealers and trucking agencies; others by doing their own transporting. Federal control has thus far contented itself largely with the division of the charges between producer and dealer, and their allocation between producer groups. Public utility control, if accepted as valid at all, could be made to include transportation. How far such control could go under other types of public

authority is somewhat uncertain, but probably as far as price fixing and control of competition. The need for control in the field is urgent. That inequitable distribution of transportation charges is a large factor in the disorder in many milk markets is only in part realized in these markets. For reasons not always understood, the dealers tend to be very insistent upon retaining control of transportation services and to yield temporary price advantages for it.

CONTROL OF GRADES AND QUALITY OF MILK

The objectives of control of grades and quality of milk may include the following:

1. To protect the health of consumers.
2. To protect consumers against the sale of milk deficient in food value.
3. To assist consumers in procuring the quality of milk they desire. This includes protecting consumers from misrepresentation of quality.

The method of control for the first of these has been the periodical inspection of herds, farms, plants, equipment, and workmen, and periodical analyses of samples of milk taken from cans, tank-cars, wagons, stores, etc.¹⁸ A more careful statement concerning these is needed for an understanding of the nature of the control problem. Bacterial examination of milk as commonly conducted is by no means a positive control method. One reason for this is that variations in sampling, even of milk from one bottle, in techniques employed in preparing the plates for the standard plate count, and in methods and care in counting the colonies on the plate, produce wide variations

¹⁸ See pp. 55 and 163.

in results unless many more samples are taken or more checking of analyses is done than is feasible in ordinary milk inspection services. Second, the examination does not disclose the pathogenic types of bacteria which are present, if at all, usually in very small numbers. Careful microscopic examination such as is made only on special occasions is necessary to locate disease germs. The value of ordinary bacteria counts in this respect consists only in that they serve as a rough index of the care exercised in producing and handling the milk, which has some relation to the presence of disease organisms. Third, in practice, examinations are not frequent enough to provide an adequate check on production and handling from day to day, or even from month to month.

High bacteria counts mean one or more of three things: filthy production, high temperature during transportation or storage, or old milk. They indicate that at some stage in its long journey from cow to consumer the milk has not received proper treatment, but they do not locate the place of the trouble. Effective control based on bacteria count, as practiced by the best city health departments, follows the milk back until the plant or process, or group of producers or individual producer responsible, is discovered, and corrects the difficulty at its source. The first step in this is to test the raw milk for its bacteria count. Many city ordinances specify maximum counts in raw milk as well as in pasteurized milk; but relatively few spend the necessary money to enforce this requirement.

As a substitute for the latter, health departments commonly require inspection of herds, barns, plants, etc., which probably is desirable anyway. The city ordinances usually outline in detail the conditions essential for production of sanitary milk on farms, and for preserving its

quality subsequently. This inspection may be interpreted as designed to secure a reasonable provision of these essentials.

The value of the sediment test is that it serves as a rough index of the care given the milk by individual farmers; also, it can be applied each day at the point of delivery.

The second objective, protecting the consumer against the sale of milk deficient in food value, is approached through ordinances covering butterfat and solids content, which are enforced through tests usually conducted at the same time as the bacterial examinations. The butterfat requirements are transmitted to the individual producer through the tests made by the buying agency at point of delivery as a basis for determining the rate of pay per hundredweight. Without butterfat control, dairy farmers would tend to keep only low-testing cows from low-testing breeds. The requirements are now high enough in many cities so that producers with Holstein herds find it necessary to keep some Guernseys or Jerseys in order to raise their tests to standard. The system of paying for milk under these circumstances has to compensate the producer fully for any excess butterfat in the milk and to penalize equally for any deficit. The present federal licenses are so devised, but perhaps are not fully adequate.

If the consumer is to obtain the quality of milk he wants and is willing to pay for, two things are needed: a system of grades that will distinguish differences in quality, and inspection to insure continuous conformity to these grades. The quality factors of importance to consumers, and associated with their preferences, are: freedom from disease germs, fat and solids content, color, freshness, cleanliness, keeping quality, and flavor. These are all associated with one another and in turn closely associated with bacteria

count. Color depends upon butterfat test and the breed. Holstein milk is flat white in color, in part because of low test and in part because of the small size of the fat globules. Such globules, however, are more easily digested. Milk may be poor in flavor while still fresh; but ordinarily poor flavor comes with age. Milk produced and kept in an atmosphere free of odors and low in bacteria will retain its flavor for several days under proper refrigeration. Careless pasteurization is also an occasional cause for poor flavor.

The existing structure of grades in most markets does not assist the consumer sufficiently in his milk purchases, as can readily be determined by anyone who sets out to get the necessary information concerning the grades and brands of milk offered for sale by the various distributors in his territory. A more complete grading system is needed, or fuller information should be placed on the bottle, or assembled and made available to the public periodically.

Under the grants of police power delegated to them in their charters, cities have authority to do all that is necessary to satisfy these needs. All that is required is that their ordinances shall not contravene any state or federal regulations covering milk in interstate commerce. City ordinances are usually more specific and stringent than state regulations. In some markets, however, the leading dealers are insisting upon a higher quality of milk than the city requires.

A possible development in some cities is that a majority will vote high minimum standards of quality and hence of cost and price, and thus compel the minority to buy better milk than they wish or can afford. Such a statement will prove irritating to those enthusiasts who believe that

families generally should substitute milk for other foods in their diets and that all milk should be of prime quality; but nevertheless it is a rational observation.

MARKET EXCLUSION

Mention has already been made of the inclination in some markets toward the use of sanitation requirements as a means of restricting receipts and supporting Class I prices on a monopoly level.¹⁷ One possible form of this is to place the emphasis upon meeting certain requirements that involve considerable expenditure upon barns and equipment. Another is to refuse inspection to additional shippers. How far a municipal authority can go in restricting the milk supply of a city by refusing to inspect the herds and barns of producers outside the milkshed has never been established in court. Justification is commonly advanced that the city has all the milk which it needs from herds already inspected and that it is not obligated to incur additional expense by inspecting herds whose milk is not needed. The word "needed" in this use, however, is a relative term, relative to price. A city will get all the milk it consumes even if it refuses to inspect additional herds as its population grows; but the consumption will be at a higher level of prices. Probably when and if this issue is finally settled, the courts will have to recognize the right of any new producer of access to a milk market if he can show that shipping to this market is *economically advantageous to him*, because prices in the market are higher than he can obtain elsewhere.

The situation with respect to new producers within the existing milkshed who wish to change from other systems of farming to dairying is somewhat different from that of

¹⁷ See p. 243.

producers on the border of milksheds. It would appear that their right of access to the market will be more difficult to deny.

Past behavior of the courts indicates that they will be loath to interfere with municipal arrangements for controlling the quality of milk, even though the concealed object may be one of exclusion as a means of raising prices. It is a rule of courts not to question the motives of legislative bodies. They will prefer to take the position that the people of the city can obtain redress of their grievances by voting to change the ordinance, or by passing new ordinances controlling the conduct of their health departments. Nevertheless, some recourse at law could no doubt be obtained if evidence of capriciousness or oppression were entirely clear. Furthermore, any participation in such control devices by co-operatives which resulted in undue enhancement of prices would be subject to attack under the Capper-Volstead Act if the business were interstate; and the dealers would be still more vulnerable. Under a federal license or agreement, these restraints are supposedly removed; but the legal status of this exemption is by no means clear as yet.

The subject of market exclusion needs to be considered from an interstate view. A majority of the large markets in the United States draw their milk supply from more than one state and would find it impossible to supply their own consumers with milk wholly from within their own state except at unreasonably high prices. Consequently, in the very nature of things these markets must accept milk from outside the state borders. There are, however, a number of markets in which out-of-state milk could be excluded without raising costs and prices very much. If under these circumstances a municipal authority or a state

authority were given power to exclude out-of-state milk, a certain price enhancement might be obtained which would be welcome to the dairymen. A number of states have played with this idea somewhat and some of the Eastern state milk boards or commissions have been strongly tempted to employ such a device. Moreover, the price of milk in a number of deficit Eastern states may actually be higher now than if milk were accepted from the Mid-West. Some of these Eastern states inspect herds and barns in adjoining or nearby Eastern states but never have undertaken to inspect sources of cream or milk supply in the Mid-West. They proceed on the assumption that it is better to have their consumers pay a little extra to induce farmers in nearby states to produce what fluid milk they need than to permit milk to come from much longer distances at lower prices. This, of course, may be an entirely valid position; on the other hand, the policy might be carried to a point where milk from more distant points could be brought in on fast trains in glass-lined tank cars in as short a time, or in as good condition, as from outlying local territory.

Interstate shipments of cream present a similar problem, but require a little different handling. An argument can be made for the importance of having fresh cream from nearby sources; but it will hardly support the relatively very high prices which would be necessary. No doubt some of the cream which at times has come from the Mid-West into Eastern markets has not measured up to reasonable standards. At present, however, much of it is said by city health officials to comply as well with sanitation standards as cream from local sources. A municipal authority might refuse to accept this cream on the ground that it could not afford the cost of inspecting herds in dis-

tant territory.¹⁸ However, few local authorities have gone to this extreme; and whether such a practice would stand the scrutiny of the courts is to be doubted. In a good many cases the problem has been worked out by agreements with state health boards in the Western states, under which they look after the quality of the cream which leaves their states. Also, more reliance is placed upon the actual condition of the cream upon its arrival in the market.

It is apparent that interstate shipments of milk could be handled on the basis of the same interstate comity arrangements as have been worked out for cream. This would call for a more vigorous form of herd inspection than is now practiced for cream, but no doubt some states would be willing to perform this service for their producers in order to give them another outlet for their milk.

One of the aids which consumers of milk need is information as to whether the cream they buy is from local or distant sources. This information could be required on the bottle. The consumer could be given the same service for milk.

It is also possible, of course, that efforts at market exclusion between states may be carried to a point where the federal government will have to take cognizance of them and set up federal standards for milk and cream that will apply to products moving in interstate commerce.

¹⁸ The sanitation standards set up for cream do not require as rigorous inspection as those for milk in most markets. Or this may be true only in practice, the theoretical standards being the same.

CHAPTER XI

THE STATE MILK CONTROL BOARDS¹

The problems which the state milk control boards have undertaken to solve have been much the same as those of the Dairy Section of the AAA and hence the analyses of the preceding four chapters can be applied directly to them. Only two differences in objectives need be noted: (1) some of the state milk control acts were promoted fully as much, if not more, by distributor interests as by producer interests, and the administration of them has reflected this in rulings designed to raise retail prices and distributor's margins; (2) most of the acts were designated as definitely emergency in character, with a definite termination date. This second difference is probably not so important as it may seem, since renewals can be expected in any state where the control board has given fair satisfaction to its supporters, at least until such time as butter and cheese prices support the kind of milk prices that producers and distributors want—and by that time the tendency will be to continue the acts for reasons of a more general nature.

It is not within the scope of this book to analyze in detail the efforts of the states to control milk marketing. What follows is intended in part to show how the federal program is dependent upon state activities, and in part to throw further light upon problems of control.

The movement for state milk control legislation began in 1932 with the passage of some ineffective legislation in Wis-

¹ The author acknowledges the assistance of Professor Robert A. Maurer of the Georgetown Law School in the analysis of the legal aspects of problems raised in this chapter.

consin, and the appointment of the Pitcher Committee to study the problem and recommend legislation in New York. The Wisconsin legislature passed the first form of its Caldwell Act early in the 1933 session and its amended form later in the session. The New York control act was passed in April 1933, and New Jersey and Connecticut passed acts in May, Ohio and Florida in June, and Vermont in July. By June 1934, six other states had passed control acts in the following order: Oregon, Pennsylvania, Washington, Virginia, Rhode Island, and Massachusetts. The Washington act was a state "Agricultural Adjustment Act" which included milk with other farm products. In the meantime Texas and Utah had made some effort to set up local control agencies in cities under enabling statutes; and West Virginia had made use of general powers of its Department of Agriculture to create a "State Milk Board" in May 1934. Also in the meantime, the governors of three states, Illinois, Michigan, and Louisiana, had vetoed milk control bills; and similar bills had been introduced into the legislatures of Delaware and South Carolina, and had been prepared by legislative groups in Kentucky, New Hampshire, and Colorado.

During the current sessions of state legislatures, bills have been introduced, or at least promoted, in two-thirds of the remaining states. Bills have been passed in eight states: Alabama, California, Indiana, Maine, Maryland, Montana, New Hampshire, and South Dakota. No others are in prospect this year. Legislatures have rejected bills or proposals for bills in the following states: Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Michigan, Minnesota, Nebraska, and Tennessee. Vigorous opposition from dealer groups has developed in some states, and from producer groups in addition in some

states. Whether or not this movement will spread further depends upon how control fares in the coming year or two. The Ohio legislature was unable to agree upon a plan for continuing its board. Legislatures in three states, Connecticut, New Jersey, and Pennsylvania, dismissed their former boards and provided for new ones under amended acts. The Pennsylvania board at present writing (July 1) is in turmoil over the appointment of its three members. The appointment made in Maryland has been so unpopular that the producers and dealers have thus far chosen not to come under the act.

THE LEGAL STATUS OF FEDERAL-STATE
RELATIONSHIPS

The nature of federal-state relationships so far as control of quality is concerned was discussed in the last chapter. Any state or a municipality with delegated powers under a charter can enforce sanitation and other quality standards upon milk shipped in from another state. The standards must be the same as those set up for milk from within the state, however, and cannot be arbitrary, capricious, or discriminatory between classes of producers. Moreover, they must not contravene any federal statutes governing interstate commerce.

Subject to the qualifications already expressed, the *Nebbia* case would seem to have established the authority of any state agency to fix uniform milk prices on milk produced and sold within the state's borders, and to control the distribution of sales returns to producers of the same, under conditions such as were alleged to exist in New York State at the time. But it did not establish the rights of the state with respect to milk produced outside and sold within it. The general principles may be stated thus: the

power to say what are and what are not proper subjects of interstate commerce, as a class, is exclusively in Congress; but a state may pass laws, provided they meet the tests of legitimate police power, to control or prohibit the production or transportation or use of any items of a commodity which in their particular conditions are injurious or dangerous to public health, safety, morals, or welfare. Any resulting burden upon interstate commerce is incidental to the legitimate state purpose, and is not such a direct attempt to regulate commerce as falls afoul of the federal power. The application of these principles to traffic in milk makes it apparent that the state may restrict the in-shipment of milk to that which conforms to the legitimate police power standards set. If Congress sets interstate standards, the state authority must give way in so far as there is conflict between federal and state regulations.

Can this power be extended to excluding milk which sells at a lower price than intrastate milk? One state milk control board shortly declared that out-of-state milk could enter its boundaries only at the prices which it had set up for milk coming from within its own territory. The obvious outcome was that more out-of-state producers diverted their milk to the state in question, which increased the proportion of Class II and Class III milk and brought down the blended or pool price, which had the effect of breaking down the artificial price structure set up. The federal government refused to do anything on the ground that it could not be a party to any arrangement that kept prices in adjoining states from being brought into line with each other by the flow of milk into whichever market seemed to be the higher at the time.

The issue here involved is of major significance to our

whole national economy. The Supreme Court has held many times that where a sale of a commodity is made and that sale contemplates a movement of the commodity in an interstate shipment, then the whole transaction, including the sale, is an interstate transaction, and that a state tax upon the sale or a state regulation of the price is such a direct burden upon interstate commerce as to make it an unconstitutional attempt to regulate that commerce itself. This doctrine has been applied to interstate shipment of electric power and natural gas. However, the Supreme Court has distinguished between wholesale and retail sales at the end of an interstate movement by refusing to permit state control over the former and granting it over the latter. In doing so the court applied the "original package" argument to the effect that when a commodity has been broken up for local retail distribution it becomes commingled with other property of like kind and character within a state and interstate commerce ends.

Such an issue was presented to the three-judge United States District Court for the Southern District of New York. The Commissioner of Agriculture and Markets had refused to issue a license to the plaintiff unless he agreed to obey all orders including one based upon the state Agriculture and Market laws of 1933 and 1934, which provided that, so far as such a prohibition is constitutionally lawful, no milk shall be sold within the state which is bought outside at prices less than those fixed for the purchase of milk from farmers within the state. The Circuit Judge in an opinion written by hand, said:

Although the section in question may be a reasonable incident to the state's internal economic policy, nevertheless it seeks to protect a local industry by excluding foreign competing goods, and that

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is exactly the kind of activity against which the commerce clauses are primarily directed. Their occasion was the mutual jealousies and aggressions of the states, taking form in customs barriers and other economic retaliations.

In further development of its position, the court declared that the states:

... cannot include the exclusion of competing goods, because they compete. That at least is forbidden by the genesis of both clauses, (the commerce power grant to Congress and the denial to the states of power to lay any imposts or duties without consent of Congress) and the express content of the second. No matter what the local need, as a nation we are without protective economic barriers between the states, certainly until Congress sees fit to allow them; and it makes no difference that they do not take the form of duties or imposts under Section 10 of Article 1. The state's intervention in the case at bar is indeed a close parallel in its result to a customs duty. Such a duty *pro tanto* secures the market to the local supply through the resulting rise in price; and that is the avowed object of this law; it will allow no foreign milk to enter unless it has already cost enough to make sure that it must compete on equal terms. The Constitution denies to a state that kind of economic sanction, and puts it in the hands of the public authority charged with the national welfare. So far as the act attempts to prevent the import of milk in cans it is therefore invalid.²

This same ruling gave the milk board authority under the original package argument to control prices of this milk once it was taken out of the cans and put in bottles. On March 4, however, the United States Supreme Court handed down a unanimous decision, written by Justice Cordozo, denying even control over prices of out-of-state milk after being bottled. This opinion contains a very strong statement of the importance of maintaining free exchange of goods between the states, and completely demolishes the arguments that prices must be raised in the

² *Seelig v. Baldwin, Commissioner*, 7 Fed. Supp. 776, Aug. 4, 1934.

adjoining states as a means of assuring an ample supply of good milk. The following from Justice Cardozo's opinion should definitely end all efforts at market exclusion on price grounds:

What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation. Formulas and catch words are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents.

Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result.

The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purposes of suppressing competition from without and leading inescapably to the suppression so intended.³

The Supreme Court will still have to rule on efforts of states to use health provisions as a means of excluding out-of-state milk. The sequence of events points to the emergence of such a case in the near future. The facts as to whether or not the milk in question meets the same standards of quality as imposed within the state should be the determining factor. Arbitrary or capricious standards, such as length of haul, should not be recognized. The outside state is likely to take a hand in such issues, and perhaps go so far as to guarantee that the milk of its producers meets any reasonable standard the city or state may establish.

³ *Baldwin v. Seelig*, 55 Sup. Ct. Rep. 497.

It would therefore appear that the states will need the help of the federal government in the control of distribution of out-of-state milk. But the efforts of the AAA to exercise such control have met with severe reverses in court decisions. These no doubt have been in part the expected outcome of efforts to extend the interstate commerce power to the farthest limits that the courts would allow; but some of the rulings have been most unexpectedly narrow and restrictive. Space will not permit a detailed review of these cases, but a mere summary is revealing. At one early stage, many markets receiving very little or no out-of-state milk set about drafting marketing agreements under the Adjustment Act. In the late summer of 1933, plans were considered for a regional organization of milk markets, the regions to be constituted so as to cross state lines. It was while the AAA was in this mood that the Des Moines and Indianapolis agreements were accepted, which later, in September and October 1934, the district federal courts ruled against on the ground that the business in question was wholly intrastate. Adverse decisions were also rendered in the Los Angeles market (September 1934), in the Oklahoma City market (October 1934), in the Baltimore market (November 16, 1934), and in the Chicago market (June 26 and November 22, 1934). In the Baltimore case Judge Chestnut declared that "the amount of milk coming to Baltimore from Pennsylvania is practically negligible," and "that the plaintiff's business is purely intrastate and is not in any way in the current or stream of interstate commerce."⁴ In the Chicago situation, negligible out-of-state milk receipts could not be set forth, and as early as April 14, 1934 Judge Holly had granted an injunction restraining

⁴ *Royal Farms Dairy, Inc., et al. v. Wallace.*

the defendants from distributing milk in Chicago. The contrary rulings rendered by Judge Barnes later declared that the matter of interstate movement of milk was immaterial, that the purpose of the license was through its scheme of base ratings to control the production of milk within the several states, which was purely a state police power function. He concluded:

All other purposes to be found in the license are merely incidental to these three principal purposes. In other words, as it seems to the court, the distributor of milk is, by means of the license, made the agency of the government for the regulation of the production of milk.

It seems clear that the production of milk is not "interstate commerce," and the court's best judgment is that the production of milk does not occur in the "current of interstate commerce," and that it does not "affect interstate commerce" in the sense that those clauses have heretofore been used in the cases. The "License for Milk—Chicago Sales Area, as Amended," in question in this case, seems to the court to be an attempt by the federal government to use milk distributors for the purpose of doing what, under the commerce clause of the Constitution, the federal government has no power to do, and what, under the Tenth Amendment of the Constitution, is reserved for action by the states or people.⁵

The case which the AAA hoped to make is clearly stated in Judge Chestnut's summary of it in the Baltimore case:

The defendants advance still another theory, to justify regulation of the plaintiff's business, which sets up a still broader conception of the interstate commerce power of Congress, and most of the defendants' testimony in this case relates to this theory. It is developed principally in the testimony of Dr. Gaumnitz, an economist in the Department of Agriculture. It is said that statistical data show a very close relationship between prevailing prices for fluid milk and its manufactured products and that the plotted price curves

⁵ *Edgewater Dairy Co. v. Wallace*, 7 Fed. Supp. 121.

for fluid milk and its content, butterfat, largely parallel each other over a period of years. The deduction therefrom is that conditions which affect the price of milk in turn similarly affect the price of manufactured products of milk; and that while the geographical area within which fluid milk may be transported from the place of production to the place of consumption is by virtue of its perishable nature quite limited, nevertheless butter, cheese and other manufactured derivatives from milk have a national market and tend to conform to a national price structure. From which is again deduced the conclusion that conditions affecting the price of milk in one locality, as for instance the Baltimore sales area, will also tend to affect the price of products manufactured from milk which are transported into Maryland largely from several of the Mid-Western states. Thus the conclusion is finally deduced that milk prices in the Baltimore area may affect the price for butter, cheese, and similar milk products customarily transported in interstate commerce and by affecting the price will affect the flow of these articles in interstate commerce.⁶

Judge Chestnut in his adverse ruling stated that the logical development of this doctrine would permit congressional regulation of practically all commerce in the state. This is "clearly inconsistent with the fundamental conception of the nature of our government under the Constitution in the line of demarcation between state and federal powers."

The recent decision of Judge Letts for the Providence market restrains the AAA from regulating the price of milk paid Rhode Island producers, and hence in effect is in line with Judge Barnes' decision. Still more drastic was Judge Brewster's statement in the Boston case that the whole license is invalid merely because it undertakes to control intrastate milk even though the defendants in question are acknowledged to be in interstate business, because it undertakes to control production through a base-

⁶ The same.

rating scheme, and because it provides for "fixing prices with respect to transactions that have no substantial or direct relation to interstate commerce."⁷

Some of these opinions were on preliminary injunctions, which are not generally accorded the weight given to decisions on final decree on the merits; nevertheless all together they do indicate judicial trends. The indications are that, under the present Agricultural Adjustment Act and its recent clarifying amendments, federal control of milksheds which are almost entirely within one state will not be upheld. Purely local production and distribution of fluid milk will be considered too remote in its influences upon interstate commerce to justify federal control. Federal control may also be denied for milk produced in the state in which dominantly interstate markets are located, but competent legal opinion holds that Judge Letts and Judge Brewster have gone too far on this score. The decisions of the lower federal courts had not, as a whole, up to the time of the Schechter decision, regarded federal licensing of milk as invalid in principle in and about those centers of population which draw their milk supply from other states in substantial measure. In spite of this decision, the courts may still accept, as a proper basis for federal action, a specific declaration by Congress that the milk business in such centers is so inextricably intermingled with interstate commerce as to require federal control over important phases of it. Proofs of evil conditions in the business, together with evidence of the futility or ineffectiveness of state control, would serve to repel arguments that the congressional purpose was in reality to control local business, including production *per se*. A comprehensive, *bona fide* regulation of the interstate mar-

⁷ From a transcript of the opinion.

keting of milk may well be expected to result incidentally in some control of production. Such incidental result does not affect the validity of the federal purpose or plan. The largest question is whether the courts will decide that federal price fixing is necessary to eliminate destructive price cutting and other unfair practices which substantially and injuriously affect interstate commerce. However, the same results may possibly be obtained through regulation of trade. The courts might accept regulation of a system of posted prices under which each dealer would be required to pay all producers the price announced in his published schedule, while prohibiting outright price fixing. Equalization of the "burden of carrying the surplus" might be accepted in conjunction with such a system of posted prices. Ratios of Class I sales to base ratings can in effect be made uniform among dealers even though prices are not.

The AAA has sought ever since early 1934 to strengthen its position in interstate commerce by securing a more specific mandate from Congress. The Jones-Connally Cattle Act amended the Adjustment Act to this effect so far as marketing agreements are concerned, but failed to do so for licenses. The amendment reads "in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce," whereas the original act simply refers to "the current of interstate or foreign commerce." The AAA has been asking of the present Congress that this amendment be applied to licenses also. In the newest form of the proposed amendments, the AAA is substituting the term "directly" for "in any way." The legal staff of the AAA believes that this form of statement will meet the standards set in the Schechter ruling. If so, then the problem

will become one of determining what activities directly burden interstate commerce.

The proposed amendments retain the provisions relating to price fixing and equalization of returns, because the legal staff is of the opinion that these stand a reasonable chance of being sustained when clearly presented to the Supreme Court.

With as full a measure of power as the AAA or the states can reasonably expect, the programs of control for interstate and intrastate markets in the same territory will still need to be co-ordinated, and this will call for collaboration between federal and state agencies. What form this collaboration can take remains to be developed. The courts may even rule that the state cannot work with the federal government in a plan to control interstate shipments; that the two controls must be independent.

THE STATE MILK CONTROL ACTS

New York. The New York act has apparently been a major influence in the writing of the acts of other states. As first passed in April 1933, this act provided for the following:

1. A milk control board of three, consisting of one new appointee, the Director, and two existing officials, the Commissioners of Agriculture and of Health.

2. Continuance for one year, on an emergency basis.

3. Duties of board: "The board . . . shall ascertain by such investigations and proofs as the emergency permits, what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, having special regard to the health and welfare of children, and be most in the public interest. The board shall take into consideration all conditions affecting the milk

industry including the amount necessary to yield a reasonable return to the producer and to the milk dealer."

4. Price fixing: The board "after making such investigation shall fix by official order the minimum wholesale and retail prices, and may fix the maximum wholesale and retail prices," on sales by dealers to consumers or to stores and by stores to consumers. If the dealers or stores do not pass on to producers the resale price increases granted, the board may fix the prices paid producers. Grades may be established as a basis for prices.

5. Licensing: The board shall require licenses of all dealers except that it may exempt those selling less than 3,000 pounds per month, and those in markets of 1,000 population or less. It may refuse licenses for any of eleven specified causes, including the commission of "any act injurious to the public health, public welfare, or to trade or commerce in demoralization of the price structure of pure milk to such an extent as to interfere with an ample supply thereof . . . which is hereby declared to be injurious to the public health, public welfare and to trade and commerce." The board may revoke a license for any of the same causes and for any violation of the act or of its administrative orders.

6. Penalties: Fines and imprisonment.

7. Use of injunction.

8. Reports by dealers, access to records, premises, etc.

The "legislative findings" offered as warrant for this act contained two types of statements, the first defining the application of the police power to the production and distribution of milk in broad general terms⁸ such as would include almost any ordinary condition of the industry, and the second declaring the present situation an emergency after the manner of the Adjustment Act. The *Nebbia* decision was written in terms of the former.

The most significant feature of this act is its main reliance upon fixing resale prices as the means of raising prices to producers, apparently on the assumption that price cutting among dealers at resale was the principal

⁸ Broad enough to include preservation of "the strength and vigor of the race."

factor in the price decline that had occurred. The interstate aspect of New York's milk problem is covered in a paragraph that makes out-of-state milk subject to the act the instant it becomes subject to New York's police power by coming to rest within the state; and a second paragraph authorizing compacts with other states or with the federal government. This act has no provision for base ratings or equalization of returns.

The next legislature thoroughly revised the milk control act before extending it for another year, for the most part in accordance with the changes suggested in the first annual report of the board. The principal changes were as follows:

1. The board was made a "division" of the State Department of Agriculture, its director being appointed by the Commissioner of Agriculture. This change was requested on grounds of unification of control of agriculture.

2. The act was separated into two parts, the first embracing the general licensing powers and control of trade practices outlined above; the second, the price-fixing and related powers. The first is established without limit of time. The New York milk industry is thus put permanently under exacting control by the State Department of Agriculture.

3. Provision is made for putting producers on quotas, and for equalization of returns, but not until all producers and dealers in the whole milkshed of metropolitan New York can be brought into the plan, under federal or state statutes. (The Board argued strongly for quotas and equalization.)

4. Control of prices of New York milk sold to dealers in other states was authorized.

5. Fixing of minimum resale prices was made discretionary.

6. Co-operatives were prohibited from cutting prices indirectly or otherwise.

7. Detailed provisions were added as to the bonding of dealers and other methods of procedure to secure enforcement; also the provisions for appeal from board decisions were made more specific.

8. The basis for prices was revised to read as follows:

"The commissioner shall investigate what are reasonable costs and charges for producing, hauling, handling, processing and/or other services performed in respect to milk, and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest. The commissioner shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public."⁹

Three bases for prices are outlined in the first form of the act; namely, prices that will (1) insure a supply of good milk, (2) be most in the public interest, and (3) provide reasonable returns to producers and dealers. These could all be interpreted in such a way as to be consistent with one another. However, the most rational interpretation of the first would give results different from the most probable application of the third. "Reasonable return" to producers is in practice very difficult to establish—probably the most rational approach to it in normal times is to determine what returns have kept producers in the business of producing milk. But milk producers are not likely to accept such a definition. Moreover, in depression times, what returns are reasonable? Surely something less than the foregoing. The revised statement of the price basis in the 1934 act adds cost of production and distribution, the balance between production and consumption, and the purchasing power of the public. These are likely to prove in practice even more inconsistent than the three mentioned, although again all could be interpreted so as to be reconcilable.

Wisconsin. The Wisconsin legislature puts the perma-

⁹ Sec. 258(m).

nent licensing program and the two-year emergency price-fixing legislation in two separate acts, found in Chapters 64 and 391 of the Laws of Wisconsin. The licensing applies to all dealers in milk, and all producers selling over ten quarts daily; the price fixing to cities of the first, second, and third class. Both are administered by the State Department of Agriculture, which is declared to be a "commission" for purposes of administering the price-fixing provisions. The emergency activity is based upon "public health or convenience," "discriminatory, unfair, or unreasonable methods of competition, resulting in unjust or unreasonable prices to the producer or jeopardizing payment for his product," or "practices that will eliminate or tend to eliminate competition." Both resale and producer prices may be fixed, "subject to the requirement that they must be just and reasonable" (no further definition on this point). Court procedure in the case of violations is carefully outlined, the court of first appeal being the circuit court of the county in which the state capital is located.

Ohio. The essential procedures of the Ohio act, licensing and price fixing in the producers' and consumers' markets, were the same; but several other features, listed below, set the act apart from the New York act and indicate clearly its independent origin:

1. A commission of four members and an executive secretary, the latter being the only full-time member. None of them holds other public office.

2. Provision for setting up in any market, or two or more contiguous markets, one or more advisory boards, representing equally producers and distributors, who may make recommendations to the commission as to price schedules, producers' base ratings, trade practices, and rules and regulations for such markets.

3. Exemption of dealers from prosecution under state anti-trust

acts for agreeing with co-operative associations as to prices to be paid producers, base ratings, trade practices, etc.; also for agreeing with one another or with stores as to resale prices; provided these agreements are filed with the commission and are approved by the commission after public hearings. These agreements must represent 60 per cent of the milk supply and 70 per cent of the number of dealers.

4. Similar exemption for the local advisory committees.

5. Filing price schedules of individual dealers with the commission, these to stand if accepted by the commission, unless supplanted by uniform price schedules as explained above.

6. Resort to the common pleas court of the county for the handling of violations or complaints against the commission.

In determining "reasonable prices," the Ohio commission was to be guided by the cost of production, necessary transportation, storage, and handling charges, prices of other foods, and "the welfare of the general public." The period of the Ohio act was two years.

Other acts. The New Jersey act, passed in May 1933, follows the New York act closely, the principal difference being that court procedure is more fully outlined, and the emergency is limited to two years. The Pennsylvania act, not passed till the following January, is like the original New York act, except that it anticipates some of the changes included in the revised New York act—in particular the bonding and enforcement provisions, and the control over prices paid to producers for milk shipped out of the state. The court procedure outlined is more like that of the Ohio act.

The Connecticut act passed in the meantime set up a full-time independent board of three members, "two of whom shall be producers of milk and one of whom shall be chairman," to serve for two years. The distinctive features of this act appear in the statement that "the board

shall seek to achieve the purposes of the act so far as possible by promoting, encouraging, and fostering co-operation among the producers, among dealers, and between producers and dealers, and by promoting a more equitable distribution of the burden of the surplus and the elimination of unfair and demoralizing practices."

The special feature of the Vermont act is that the board shall exercise its power in any market only upon written application of a producers' association supplying a substantial proportion of the milk consumed in it, or of the producers if there is no association. This act has no provision as to equalization of returns. The "emergency" period is left indefinite.

The Oregon act, passed in December following, is notable for its provision that no member of the board shall be a producer or dealer or have any financial interest in the industry. It contains clear provision for base-ratings and equalization of returns, and authorizes differentials between wagon delivered and store milk based upon difference in cost. The act is based on the existence of an emergency, but no provision is made for its termination.

The outstanding features of the other acts passed in the 1933-34 legislative sessions are given in Appendix F.

Proposals for state acts: Following a conference of AAA officials and representatives of certain state boards and certain milk co-operatives, the National Co-Operative Milk Producers' Federation drafted recommendations for new state legislation, part of these taking the form of verbatim proposals. Differences in the laws and institutions of the states, and in conditions under which milk is produced and marketed, made the preparation of one model act impossible. The recommendations follow the lines of the New York, Pennsylvania, and Oregon acts

most closely. A copy of the Ohio act is included with the the others in the appendix to the report, but the point is made that the Ohio plan of local self-regulation may represent a form of delegation of powers not valid in all states.

The recommendations emphasize the need for collaboration between state and federal government in developing an adequate milk control set-up and are framed to facilitate this. As one would expect in view of their authorship, they not only carefully guard the rights and prerogatives of the milk co-operatives, but go so far as virtually to commit the state to a program of promoting the interests of the milk co-operatives.¹⁰ Nothing is said specifically about price fixing, but the sections in the acts referred to for guidance in defining the "general powers of the board" all contain provisions for both producer and resale price fixing. Explicit statement is made of the provisions for a fully developed system of equalization of returns, combined with pooling or base ratings (as preferred) within a milkshed, which the board is given power to restrict. The board is to be given power to allot base ratings "provided, however, that wherever possible the bases of producers who are members of co-operative associations shall

¹⁰ "It is the policy of this state to promote, foster and encourage the intelligent and orderly marketing of milk, to eliminate speculation and waste, to make the distribution of milk between producer and consumer as direct as can be efficiently done and to stabilize the marketing of milk through the organization and operation of producer owned and producer controlled co-operative associations. The normal process of producing and marketing milk has come to be a co-operative enterprise of vast economic importance to the state and of vital importance to the consuming public, which ought to be safeguarded and protected in the public interest." This statement draws upon phraseology found in the co-operative statutes of many of the 44 states having passed such laws; but it goes beyond these statutes in its more specific application to milk producer associations and in particular it holds state agencies more definitely to promoting and safeguarding their interests.

be allotted and adjusted by said association.”¹¹ The same deductions for services are to be made from non-member returns as those voted by the co-operative members for themselves.¹² New dealers can be denied a license if adding another dealer would “tend to a destructive competition in a market that is already adequately served.” Many of the present state acts have a provision that a dealer’s license can be revoked if he is found to be a party to a combination to fix prices. The recommendations do not cover such a provision, and furthermore point out that if it is included a specific exemption of the co-operative should be made. No statement is made as to any local milk boards and their composition.

The essential point concerning the legal status of price fixing is whether or not such price fixing is necessary to maintain an adequate supply of good milk for a market. The various state acts contain a large amount of verbiage on the general subject of the basis for milk control, but few if any of them are specific on this vital question. The proposed section covering this states definitely that health regulations are not enough to “safeguard and protect the consuming public” in such conditions as now prevail in the markets of the state, and that the controls provided in the act are necessary to insure “a constant and adequate supply of pure milk to the public.”¹³

¹¹ Of course, it is always “possible” for the association to allot the bases of its members.

¹² This is the “taxation without representation” feature objected to by non-members in the early marketing agreements. It is true that the non-members will share in the services purchased out of the deductions; but not all the non-members may want or need some of these services. They are not even given a chance to vote for or against them in the proposed agreement.

¹³ Of course any state act can declare this to be true as a matter of legislative finding; and the courts may not wish to go behind this statement. Nevertheless, as a matter of accuracy, in few if any states—not even in New York—

Related to the foregoing is an attempt in another proposed paragraph to justify "uniform" prices on the ground that "surpluses must be sold for factory or other purposes usually at prices lower than would be received if sold in the fluid milk trade." This follows closely the language of the Nebbia decision commented upon earlier.¹⁴ Such a clause in effect tries to throw all surplus into one category, and thus to furnish a legal justification for the policy of many co-operatives of getting control of all milk within reach of the market.

The recommendations are to the effect that the acts be made temporary for the period of the emergency. This is in keeping with the general desire of the co-operatives to control their own markets with only such help from the government as they can use to their advantage.

The 1935 acts. Of the bills proposed in current sessions of legislatures, those of Illinois, Indiana, Michigan, and Tennessee closely follow the principles outlined in the proposals for state laws just reviewed. The Alabama bill follows them in part. Of the bills passed, therefore, only the Indiana bill follows the suggested pattern closely. This act gives the board power to allot and adjust bases, to require dealers to pay for milk on a use basis and pay producers a blended price, and to make deductions and equalize among dealers as to payments to producers. The Georgia bill, which was killed, undertook to collect a stamp tax on evaporated milk. The original California bill provided licenses for producers of fluid milk and permits to producers of manufacturing milk. Regulation was to be largely in the hands of local committees having four

has it been really proved that enough milk meeting sanitary regulations would not be forthcoming indefinitely without price fixing.

¹⁴ See p. 293.

representatives of the milk producers and two representatives of the distributing or manufacturing interests. Costs of administration were to be obtained by a levy on all milk produced. The bill passed was somewhat less pretentious than this. A peculiar feature of it is provision for separate treatment of fluid milk and cream. The Maryland bill also has provisions for producer licenses and taxes on production. The Maine act is simple and unpretentious, suggesting the Vermont, Connecticut, and Virginia acts in certain particulars. It has no provision for equalizing returns.

EXPERIENCES OF STATE MILK BOARDS

The New York board at once announced a schedule of resale prices at the supposed or nominal prevailing level, and decreed that any benefit dealers obtained should be passed on to the producer. But producer prices did not rise. On the other hand, they did not fall, as they commonly do in the spring. Producers, nevertheless, were not satisfied, and a system of classified prices (ten classes) was devised and proclaimed, with prices to producers for Class I milk 60 cents above pre-existing prices, and consumer prices one cent higher. In July a reduction of 7.5 cents in freight was all passed on to producers, and consumer prices were raised another cent per quart, 35 cents of the 46 per hundredweight going to the producers.

In spite of these increases, a strike broke out on August 1 and spread rapidly for eight or nine days, the warring group demanding 45 per cent of the consumer price and the discarding of the class-price system. Governor Lehman gave assurance that a careful study of dealers' spreads would be made. The results of the analysis presently made by Dr. Leland Spencer were to the effect that the margins

then prevailing were too low for any profits for a majority of the dealers. Hearings were held on August 21-23, but the board delayed action pending the results of this study. At this time the series of conferences, not yet ended, looking to collaboration of the AAA and the several states in the New York milkshed, was also started. A proposed federal marketing agreement was submitted on October 19, but no action resulted. Meanwhile some dealers were buying milk in Pennsylvania and Vermont at less than board prices, and the other dealers were demanding a general price reduction. Hearings on a federal marketing agreement were finally held on February 5-9 in New York City and Syracuse. These and numerous conferences failed to reconcile the conflicting points of view of the AAA and the states as to division of control between them. The Attorney General of New York expressed an opinion that if the terms of the license as written were carried out, "We will have entered into an era of supreme national authority and our federated national structure will be at an end."

Commissioner Baldwin stated at the hearing that he would "recommend to Governor Lehman that he veto any bill to continue the milk control board unless that board can have federal assistance." By no means all of the violations, however, had to do with interstate shipments of milk. Commissioner Baldwin's first annual report gives examples of the devious methods employed to conceal dealer-to-store cut rates, and describes the methods by which new co-operatives were set up for the purpose of enabling producers to absorb country plant costs formerly borne by dealers. These violations occurred even though the New York board was much more aggressive than the AAA in pushing its cases through the courts, securing two United States Supreme Court decisions by November 1934.

An important feature of the proposed license was its plan for equalizing returns over the whole membership without any base ratings. This was in keeping with the pooling system followed by the Dairymen's League. The Sheffield Farms Company naturally opposed this feature, which would require that its contracting farmers shift their production to the same seasonal variation as practiced by the League members in order to escape underpayment; and many of these farmers were not well situated to make such a shift. Apparently, however, no one presented a clear statement of the need for base ratings as a foundation for equalization of returns in a milkshed with conditions so diverse as within the New York milkshed. Dr. Spencer's paper before the 1934 American Institute of Co-Operation had listed prices for 25 dealers, 201-10 mile-zone equivalent, ranging from \$1.27 to \$1.86 per hundredweight¹⁸ as evidence of the need for equalization of these prices without making any allowance for differences in the extent to which the producers supplying the different dealers had adjusted their production seasonally to consumption. The Dairymen's League prices ranged from \$1.30 to \$1.42; the Sheffield Farms' price was \$1.50.

During 1934 the difficulties of interstate shipment increased, and in the fall the conferences of federal and state officials were again resumed. The federal authorities again offered to collaborate, but of course insisted upon the right to control the prices paid for milk shipped across state lines. Differences between the pooling and rating systems employed by New York and New Jersey respectively proved a stumbling block for a time. Arrangements are still in abeyance at the time of writing (July 1935). In spite of all the foregoing difficulties and violations, how-

¹⁸ 3.5 per cent milk, March 1934.

ever, there can be no doubt that actual producer prices in New York were raised in important measure, and that the amount of irregularity in the market was considerably reduced.

The Ohio commission at once set about securing the setting up of the local committees and marketing agreements. By May 1934, agreements had been worked out covering 55 areas and 86 per cent of the population of the state. A general plan of organization was developed by the commission, but the local markets were expected to work out certain important details according to local conditions. All the agreements provided for a milk control committee to administer the market and a grievance committee to handle complaints and violations. Most of the plans imposed base rating upon all producers and many provided for equalization of returns. Ten markets provided base ratings without classified prices.

A study of prices in eleven markets made at that time by Paul Young and R. W. Sherman of Ohio State University indicated that board prices to producers had been raised the first year by the agreements from \$1.30 to \$1.80 per hundredweight. Retail prices were raised from 8.0 to 9.6 cents per unit, or 74 cents per hundredweight of milk. The dealers thus received 24 of the 74 cents of nominal increase. Prices were raised again in many of the markets following the 1934 summer drought. Producers, who saw no reason why dealers' margins should be increased in the least, criticized the commission as being dominated by a dealer point of view. The commission reasoned in the early period that the NRA labor provisions and the like had increased dealers' expenses.

While the commission was busy setting up its local market organizations, it left the job of enforcement largely to the local committees. They were far from diligent in

many cases, and much criticism arose. But this partly subsided when the commission turned its hand to prompting or supplementing the local agencies and violations were reduced in consequence. The penalties imposed by the local courts were fines, so that the difficult procedure of revoking licenses was avoided. In general, the agreements worked with fair success or better in most of the middle-sized cities. The Cleveland market proved as refractory as the other large markets of the country. As in New York, one effect of the program was to encourage the formation of many new co-operatives, most of them of a loosely cohering sort.

Wisconsin began by fixing prices paid to producers in the Milwaukee area on December 1, 1932; resale prices were not fixed until February 8, 1933. Following the revision of the act, 18 of the 27 markets made subject to it were placed under license by the fall of 1934, by which time 50 or more of the smaller cities had come under voluntary agreements. The agreements in general did not undertake to raise prices, but rather actually to maintain the supposedly prevailing price through prohibiting unfair types of underselling. A good many cases went to court at the start. Some of the district attorneys, being elected officers, were afraid to proceed because of fear of loss of political favor, but this difficulty diminished as time went on. The usual outcome of violations was that the offending dealer pleaded guilty and was fined costs, or costs and a penalty. As one would expect, the voluntary agreements have fallen down completely in a number of markets. All the Wisconsin agreements, except that of Milwaukee, are relatively simple. So much milk is readily available that base-rating and equalization plans seem superfluous.

The commission's function in Milwaukee has been to

act as an arbiter in price negotiations between dealers and the producer associations and to attempt to prevent unfair competition. Enforcement was lax at the start. But presently the Governor appointed a special prosecutor for Milwaukee. The dealers and producers supplied the prosecutor with assistants to secure evidence of violations, and 30 or more dealers were convicted and fined. Since then there has been appreciably less price cutting. Make-shift co-operatives have also caused some difficulty in the Milwaukee market through underpayment of producers by various devices.

The Connecticut board proclaimed a uniform retail price of 14 cents in all cities, villages, and hamlets in the state, and a uniform price to producers of 7.75 cents per quart (an increase of 2.5 cents), less transportation and related charges, for Class I milk. Milk was pooled by individual dealers. A scheme for equalization of returns was announced, only, however, to be ruled out by a court decision. The chairman of the board was a retired milk distributor, who held a theory that the food value of milk is so great that consumers will buy it at a very high price once they get used to the value of it. His plan of campaign was therefore to set the consumers' price high enough to satisfy the producers fully, if such were possible, and to afford the dealers comfortable margins, and then wait for things to settle down. He was willing to gamble that before the two years granted the board were gone, enough Connecticut citizens would be satisfied with conditions to insure continuance of the program.

This program was vigorously attacked by several groups, even including a vociferous producer group, who charged that the commission had given the dealers too large a share of the consumer's dollar. The chairman met this

attack by having a study made of dealers' margins which showed profits to be small, in the accustomed manner. The report of the study was effectively attacked by Dr. Charles A. Beard, a dairy farm owner in the state, who had been giving counsel to the malcontent group of producers. The board was attacked and defended in the fall political campaign, and has recently been supplanted by a single commissioner, a former commissioner of agriculture, who has authority to choose two deputies. As one would expect, the 14-cent retail price generally did not hold in the smaller communities; and the small dealers and producer-distributors were frequent violators in the larger markets. The 14-cent price was recently lowered to 13 under pressure from the producers' association.

In Florida, the retail price of milk was raised to 13, 14, or 15 cents in the larger cities. Many distributors had been selling as low as 8 and 10 cents per quart. Prices to purchasers were raised by 25 to 35 per cent. Mr. E. C. Fogg of the Miami Home Milk Producers' Association reports that dealers' losses from secret discounts and the like "have been reduced from 75 to 90 per cent." The enforcement has been vigorous, perhaps questionably so on two or three counts, particularly in the matter of handling shipments of milk and cream from other states. Still there have been violations, principally by groups of Latin-American producers in some of the markets. Merchants receiving discounts have refused to testify because under the act they are equally guilty with the distributor.

The Pennsylvania board undertook to establish the 11-cent retail price supposed to maintain in Philadelphia, and a 10-cent retail price in the rest of the state. All buying was put upon a classified use basis (four classes) as in New York, without equalization of returns except as

arranged by the co-operative among their contracting dealers. The Class I producer price first named for the Philadelphia market was the same as set up in the AAA marketing agreement, which represented a substantial increase; and an effort was made to raise prices elsewhere by the same amount. These and subsequent increases brought producer Class I prices by autumn to \$2.60 in the Philadelphia area, to \$2.48 in the Pittsburgh area, to \$2.40 in the Scranton area, and to \$2.24 in the rest of the state. Pittsburgh and Scranton retail prices were presently raised to 11 cents. The board made the mistake of setting the prices of other classes of milk too high, with the result that dealers found it advantageous to buy such milk and cream outside of the state. At one stage it also cut out the dealers' allowance for operating country plants in the Philadelphia area, thus provoking dealer threats to close the plants and take delivery in Philadelphia. These mistakes were ultimately corrected, but only after considerable delay and after the Governor had forced out one board member.

In consequence, the milk markets of Pennsylvania were much disturbed during the first year of the board's operations. Also, the board was so busy issuing orders and then changing or rescinding them that it gave little attention to their enforcement, with the result that they were widely ignored. In spite of this inauspicious beginning, however, the board has made definite headway in the last year.

The most interesting feature of the New Jersey board's experience has been its effort to control the price of milk shipped into New Jersey from other states. After failing to do so under its own power, it endeavored to get the AAA to establish the same price on such milk as that fixed by the board for New Jersey milk. This was in keeping

with its announced intention at the outset to reduce the area of the New Jersey milksheds and "enable New Jersey producers to participate fully in the markets of New Jersey." Within a year, the board has raised retail prices on Grade B milk from 9 to 13 cents per quart, and blended producer prices, all grades and classes of milk, from \$1.30 to \$2.40 per hundredweight, according to data furnished by the board. Enforcement has been unusually vigorous, over 600 dealers having been summoned for hearings during the first year. At the end of the year, about 40 cases were pending in the district courts. An enforcement device now being employed consists of calling the offending dealer before a hearing to which the press and public are invited.

The Governor of Oregon met the requirement that the members have no financial interest in the milk industry by creating a business-man board. The principal criticisms of activities in this state relate to certain actions adversely affecting a leading producer co-operative and to weak enforcement, no doubt inevitable with the very limited budget available. Nevertheless, the amount of price cutting has been considerably reduced. The prices set by the board now are the prevailing prices, whereas no one schedule of prices prevailed before.

The Vermont board requested the dealers and the more numerous producer-distributors in any local market seeking control to get together on a schedule of resale prices in advance of the public hearing in the market. These prices were accepted in a majority of cases, lowered in a few, and raised in more. The dealers in some markets were afraid to raise prices to the level desired by the board. They were instructed to pay the producers at least half the retail price. Retail prices were commonly raised about

2 cents per quart in the different markets. The range of prices fixed in the 50 cities and towns going under control in the first year was from 9 to 11 cents. The price in Burlington, a city of 25,000 (the largest in the state), was 11 cents at the same time as in Boston, to which dairy farmers in the same producing area were also shipping milk. No base ratings or equalization are provided. The producers naturally try to sell as much as possible in their nearby local markets. This has inevitably led to secret price cutting, in the smaller markets particularly.

Rhode Island milk markets have been much less affected by price cutting since control was undertaken, in this case under the joint administration of the AAA and the state control board. The AAA undertook to control prices to producers and Rhode Island the resale prices. It was understood that if the AAA withdrew, Rhode Island would control the prices to Rhode Island producers. Price control has been fairly effective even in the wholesale market, although some of the leading operators in the market doubted the possibility of this. There has been opposition, of course, and one form of this recently led to Judge Letts' adverse court decision, as a result of which the AAA has suspended the federal license.

The Massachusetts board has confined its control to the secondary markets of the state until recently. In place of fixing resale prices in the markets, it has "recognized" resale prices agreed upon between dealers and producers, and has assisted the dealers in maintaining these resale prices. The procedure has therefore been to work with the dealers and expect them to reflect the improvement in the resale market back to the producers in better prices. The prices established have largely been those which were supposed to maintain. The dealers have gained to the

extent that their sales are more largely at these prices. The producers have gained to the extent that fewer dealers are cutting under the supposedly prevailing producer prices. The extent to which these prices are observed varies greatly between markets. There has not been much actual official enforcement as yet.

This procedure was extended into the Boston market in the recently established joint working arrangement with the AAA. The attempt to secure preferred position for Massachusetts producers in the Boston market has been limited to higher base ratings (100 per cent of production at present).

The Governor of Virginia departed from the pattern set by other governors, in that he appointed one person to the commission who could be said really and competently to represent the public point of view. The other two members are producers, one a producer-distributor. After eight market areas had worked out agreements, one of them revolted and went to court. The objectors were sustained in a state supreme court decision which denied the validity of the whole state milk control program. Recently this decision was reversed at a second hearing.

SUMMARY AND OUTLOOK

An unmistakable conclusion from the foregoing is that the state milk control agencies, as well as the AAA, have raised the price of milk to producers. In some states the increase has consisted principally of making the existing supposed price to producers much more generally prevail; in other states, a price increase has accompanied the foregoing; in still others, the price increase has been accompanied by little increase in uniformity, perhaps even by less. The amount of the increase may be judged by com-

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parisons made by the Dairy Section of nominal price increases on Class I milk between December 1932 and December 1934 in 40 markets, 17 being under federal control, 13 under state control, and 10 under no control.¹⁶ The percentage increases compare as follows: federal, 25; state, 37; neither control, 20. These increases are less than those computed for 50 markets by Mr. W. A. Wentworth of the Dairy Industry Committee. His figures, which show increases from May 1933 to May and September 1934 respectively, are shown in the accompanying table.

ESTIMATED PRICE INCREASES FOR CLASS I MILK, MAY 1933-
SEPTEMBER 1934^a

Number of States and Type of Control	Price per Cwt. May 1933 ^b	Increase by May 1934		Increase by September 1934	
		Cents	Per Cent	Cents	Per Cent
23 (federal)....	\$1.45	42	28	71	49
11 (state).....	1.73	54	31	77	44
16 (neither)....	1.66	26	16	35	21

^a Computed by W. A. Wentworth, Dairy Industry Committee.

^b f. o. b. city on a 3.5 butterfat basis.

Prices were clearly lower in May 1933 than in the preceding December. The state controlled markets included in both comparisons are more in the South and East and less in the Mid-West than are the federal controlled markets. They had higher prices in December and in May, and showed larger increases at the start. Competition with butter and cheese prices is much closer in the Mid-

¹⁶ It must be emphasized that these changes are merely nominal, since no account is taken of changes in the extent to which the supposed prices have actually been paid. On which date they may have prevailed more nearly is uncertain.

West than in the East and South. These data do not take account of changes in the proportion of milk sold as Class I, or of changes in prices of other classes of milk.

The foregoing discussion strongly suggests that retail prices have been maintained at a higher level relative to producer prices under state control than under federal control. The data on retail margins are not comparable between cities or dates for several reasons. Probably of some significance, however, is the circumstance that if the 50 cities whose gross margins were published by the AAA last autumn are ranked from 1 to 50, according to size of margin, the average ranking of the markets under federal control was 19; of the cities under state control, 26; and of the cities under neither control, 31.¹⁷ Apparently where dealers' margins have been maintained at a high level, control has not been sought.

As to violations and enforcement, clearly some of the state control boards have a better record of accomplishment than has the AAA. However, the difference is not much for cities of the same size and type. Neither has been very successful in the larger cities. Both have had fair success in the smaller and middle-sized cities. State control has not commonly been effective, probably fortunately, in small communities.

Two factors conducive to somewhat better state enforcement have been that distributors have collaborated better with state agencies than with the AAA, both by obedience to regulations themselves and by reporting violators, and that local courts have handled the violators by simple methods not involving revocation of licenses. The dealers have collaborated better because they have been represented on the control boards or marketing agreements and

¹⁷ AAA Press Release No. 698-35, Oct. 4, 1934.

the procedure adopted has undertaken to protect their margins as well as the producers' returns.

Resale prices as such have been freely violated in a majority of markets, especially at wholesale, and especially in the larger cities. Whether such prices can be enforced by state boards generally is still problematical. Dr. Spencer's recent series of recommendations for state control boards suggests the "focussing of enforcement efforts upon payments by dealers to producers."

The experience with local committees and local marketing agreements indicates that this plan of procedure should be more widely adopted. Dr. Spencer agrees on this point. In any case, adaptation of prices and buying plans to local conditions is highly necessary.

The state board has in most cases ignored the problem of equalization of returns to producers. This no doubt was wise if the board was to serve only for a year or two. But if any board is to continue even for a year or two longer, it can scarcely escape grappling with this problem in some markets. Unless equalization goes the whole way, it may result in inequities, revolts, and court reversals.

Equally clear is it that uniform application of classified price systems without equalization may introduce more evils than it corrects. State boards not ready to undertake complete equalization will do well to consider merely requiring that small dealers pay flat prices properly in line with their proportion of Class I sales, and to furnish monthly the information needed to determine this. Dr. Spencer's recommendation is "more restricted use of the classified price plan, with most dealers required to pay a flat price."

The difficulties of the state boards with milk from other states has been in part due to mistakes in price and equali-

zation policies. A proper structure of price differentials between markets in the same general area, coupled with equitable systems for making returns by producers, will clear away most of these difficulties. The AAA cannot safely participate in joint control undertakings until these difficulties are met.

The foregoing analysis of the several state milk control acts and of the experience of the boards administering them indicates, contrary to the usual statements, wide divergences in the set-up and composition of boards, in administrative organization, in price and margin policies, in methods of equalization, if any, and in enforcement procedures followed. Already the tendency is apparent for the earlier acts to be modified to include improved features of later acts; and for all of the boards to utilize the successful experience of other boards. One can therefore expect improvement in the next few years; but it may not be enough to warrant continuance of many of the state boards.

The primary question with respect to state control agencies is as to their nature. Are they to become full-fledged commissions? Or are the states going to create a new type of agency called a "board" which shall have powers such as were formerly granted only to commissions, without the same provisions for responsibility to the public? And if the latter, will the courts sustain them? There seems to have been some effort in the state control acts to discriminate between *board* and *commission*; to apply the former term to bodies made up wholly of representatives of producers, dealers, and other groups directly engaged in the business of producing or distributing milk, and the term commission to bodies in which either none or only part of the members are in such business. Few

of the milk control bodies now called commissions, however, can be said to qualify under a proper conception of that term. A true commission represents the public point of view wholly and solely, and if rightly constituted has upon it no representative of private interest groups. Knowledge of the particular industry to be controlled is not half so important as knowledge of public affairs and public policy, since a technical staff can supply much of the knowledge of the industry needed, and of course any person with the mental capacity and general education needed for a commissioner can soon acquire the special knowledge he needs. Once a commission is a going concern, a new appointee learns quickly from the senior members of the staff. Nevertheless, knowledge of the particular problem is desirable if it can be found in men not otherwise disqualified. If a business man is appointed on a public commission, he should be one who has demonstrated his public mindedness. The ordinary business man on a milk commission is likely to have a dealer point of view.

If state boards made up of industry representatives rather than commissions are to have control of the milk industry, *on other than an emergency basis*, then the least that can be required is that all their actions shall be subject to review by some authority who does represent the public point of view. In the federal agreements and licensing arrangements, the Secretary of Agriculture is made such a reviewing agent—a wholly inadequate arrangement, as explained in the preceding chapter, but infinitely better than no such review at all. No argument is necessary to prove that even less adequate provision is made for review and control in the interest of the general public in a number of the state control acts. The control of the appoin-

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tive power is wholly inadequate, especially if the act requires that representatives of the industry must be appointed.

Obviously, therefore, if milk control is to be continued, many of the boards will need to be reconstituted and the acts revised preparatory thereto, unless we are going to accept as a matter of public policy a degree and form of industry self-government which seems clearly unthinkable.

CHAPTER XII

OTHER DAIRY PRODUCTS

In this chapter are outlined the activities of the Adjustment Administration relative to butter, cheese, evaporated milk and ice cream, and dairy products in general, except those centering around production control, which are reserved for special consideration in Chapters XIII and XIV. It must be admitted that the "adjustment" program has proceeded slowly so far as the major factory dairy products are concerned. Except for one or two occasions, such as when the price of butter dropped precipitously in the late summer of 1933, there has not been the same pressure for action from the ranks as in the case of the other commodity programs. Action has no doubt been slow in part because of an opinion commonly held within and without the AAA that production control is difficult if not impracticable for dairy products; and a further opinion in many circles that marketing agreements can add very little to the price of butter and cheese. Although dairy-men have realized that increased production and reduced consumption are what brought butter and cheese prices down toward the level of other farm product prices, restricting production has not seemed feasible to large numbers of them. No doubt, also, the general propaganda of the last ten years in behalf of greater consumption of dairy products as a health measure has predisposed many dairy farmers to oppose restriction of output.

Some spokesmen for the dairy industry criticize the Administration for its failure to develop a program for dairy products simultaneously with that for cotton, wheat,

and corn and hogs. It did create a Dairy Section at the start. That this section did not produce a program by mid-summer of 1933, as did the three sections for the other commodities named, was in some measure due to choice on its part. During the summer of 1933, Dr. King had members of his staff working upon possible procedures for control of butter and cheese output, and the various possible methods of handling the problem associated therewith. In the autumn he brought in a small group from the states to work on various phases of this problem. For the Administration as a whole it seemed good sense to take first the commodities which were most urgently in need of attention, and at the same time easiest to handle. The experience in working with corn and hogs was much needed before settling upon a procedure for dairy products. Another element in the situation is that the fluid milk producers absorbed about all the efforts of the Dairy Section during the first six months.

THE PROPOSED BUTTER AGREEMENT

Aside from production control, the first activities of the AAA relating to butter center around the unsuccessful efforts to secure a national marketing agreement. These activities are of special interest because they bring out clearly the issue of representation in developing marketing agreements and administering them subsequently. The agreement presented to Secretary Wallace on June 26, 1933 was prepared by a planning committee consisting of five representatives from each of two organizations, as described in the following by John Brandt of Land o' Lakes Creameries, Inc., one of the five representatives of the creamery group:

When Secretary Wallace looked over the organizations of national

scope in the butter industry he could locate just two, which included the American Association of Creamery Butter Manufacturers and the National Co-Operative Milk Producers' Federation. He asked the managing officers of these associations to prepare a marketing agreement and code for the butter industry. They did so and there was no evidence that the members of that committee sought gains for their association at the expense of other organized groups. The government in the tremendous task of business recovery intends to deal with the organized groups in the industry. That is the only way it can proceed. It cannot wait until men in unorganized groups get together. The government wants to get its machinery in motion and accomplish what the new deal has promised.¹

As first drafted, the agreement called for fixing a weekly price by a butter board made up of five members from each of these two organizations. This proposal was the consummation of Mr. Brandt's ambition of many years to have the price of butter named by the creameries instead of being determined in a speculative market. This provision was presently dropped, however, in spite of Mr. Brandt's insistence, and another substituted calling for study of the "rules, practices, and procedures of the Exchanges" and later recommendation of the changes deemed necessary. Other provisions were aimed at removing wasteful competitive practices. Licensing was omitted for the time being.

Certain features of the proposed agreement were opposed by a group consisting mainly of independent co-operative creameries, principally in the Northwest, a smaller number of proprietary creameries, and the National Association of Butter and Egg Dealers. The independent co-operative creameries are a very large group, much larger than the Land o' Lakes group; but how many of them were really represented by the position

¹ From a circular letter sent by Mr. Brandt to member creameries on July 31.

taken by W. A. Gordon, editor of the *Dairy Record* of St. Paul, cannot be determined.² There is no mistaking the fact that the opposition gained strength rapidly. It was started by the Minnesota Creamery Operators' and Managers' Association, and taken up by similar organizations in the adjoining states, out of which was presently formed the National Association of Local Creameries. Several things contributed to this rapid growth. First of all, it became a phase of a conflict of long standing between the Land o' Lakes creameries and those on the outside selling their butter through the regular dealers, in which conflict the creamery operators had always played an important role, more or less in alliance with the dealers. These independent creameries did not relish the thought of being subjected to price fixing by a board on which the Land o' Lakes organization was represented through each of the two organizations, and of which Mr. Brandt, its manager, was to be a member. Second, these local creameries had a long-standing grudge against the so-called centralizer creameries which belonged to the American Association of Creamery Butter Manufacturers and which were to be represented on the proposed butter board.

The remaining chief point at issue was a provision permitting butter manufacturers to pay differing prices for the same quality of butterfat at different points (after allowing for freight rates) if the differences in price were "made in good faith to meet competition. . . ." This seemed to the opposition to provide centralizer creameries a basis for local price cutting in their cream buying.

The opposition presently submitted a rival marketing

² Mr. Gordon claims that "authorization from more co-operative creameries than belong to Land o' Lakes was secured in four days." *Dairy Record*, Aug. 2, 1933.

agreement. The hearing in Washington on August 24 did little to settle the issues. New rifts also appeared. Mr. Holman wrote in the annual report of the National Co-Operative Milk Producers' Federation as follows: "After the hearing, marked differences of opinion developed among the trade and also between our member associations as to the desirability of such an arrangement." By this time the AAA dairy products program was full of rifts of its own; and after the January policy announcement, attention was turned to production control. By the time this was dropped, marketing agreements had lost their glamour.

THE BUTTER PURCHASES³

The butter purchase program of the Administration is important primarily from the standpoint of the light it throws upon the possibilities of price control through buying and subsequently disposing of "surpluses." A considerable faction in the dairy industry consistently maintains that marketing control is sufficient; that there has been no surplus of butter and other dairy products that could not have been moved into consumption (presumably at a good price, although they say little about the price) if only some efficient marketing system had been devised. What light does the AAA butter purchase program throw on this contention?

No argument or experimentation is needed to prove that the price of butter can be raised if large quantities are purchased and distributed as relief food for the unemployed, since without such relief aid they would consume much less butter. The 11 million pounds of butter bought by Land o' Lakes Creameries, Inc., between August 17

³ Details of this operation are outlined in F. F. Lininger's *Dairy Products under the AAA*, May 1934.

and October 25, the 32 million pounds bought by the Dairy Marketing Corporation⁴ between October 17 and December 16, and the 25 million pounds bought in 1934 by the Federal Relief Surplus Corporation were all moved into relief channels. On October 12, 1933 Mr. Peek announced that a substantial portion of this butter would be moved into relief channels, but on January 1, 1934, only 3.3 million pounds had been distributed and the government had 40 million pounds on its hands. Subsequently the movement was much more rapid, 22 million being distributed in January alone.

How soon the trade generally assumed that the butter purchased would be diverted to relief channels is a matter that cannot be precisely determined. The Administration never had any thought of destroying it—such a procedure was clearly unthinkable with millions of families in need of food. It could have been dumped on the export market only at low prices. The other alternatives were holding it indefinitely and feeding it to the market later when the market was stronger, or diverting it to relief uses. That the Administration definitely planned on the latter course, and that the trade so assumed, before the price of butter rose to the level of about 24 cents in September, which it maintained for over two months afterwards, seems abundantly clear. The first break in this price (half a cent) came on November 13, nearly four weeks after the Dairy Marketing Corporation began buying. The reason for it was that the government quit taking all the butter offered for sale at less than 24 cents.

⁴ A private agency whose stockholders were the National Co-Operative Milk Producers' Federation, the American Association of Creamery Butter Manufacturers, the International Milk Dealers' Association, and the National Cheese Institute, which operated as a broker or buying agent for the government, in the New York, Chicago, Portland, Seattle, and San Francisco markets. It bought on confidential orders from the government and was financed by the government.

If the movement into relief channels had been started promptly in August, and all the butter acquired had been thus disposed of, the 24-cent price might have been maintained throughout the winter, although probably it was a little high in view of the limited amount of butter which the government wanted to divert to relief. But the longer the buying continued unsupported by relief distributions, the more butter had to be bought to support the pegged price. By mid-November it became evident to the trade that the volume of purchases this required was greater than the government would continue. As a result, prices began slowly to subside and broke sharply on December 14, the day before the announcement which discontinued the Dairy Marketing Corporation and transferred all relief purchasing direct to the Federal Surplus Relief Corporation.⁵ With Secretary Wallace's announcement on December 16 that the butter acquired would be turned over to the FERA, and that in addition enough butter would be purchased to bring commercial holdings down to within 7 million pounds of the five-year average for December 1 (18 million more pounds), the market price rose to 18-20 cents. As the relief distribution got well under way, it rose to 23 cents by the end of the month and to 26 cents in February. No attempt has been made to peg the price since January 1934, but purchases have been made whenever the market has given signs of weakening because of the pressure of supplies.

The table on page 357 gives the essential data as to price changes and purchases during the period of greatest relief

⁵ A non-profit corporation having the following Board of Directors: Harry L. Hopkins, president; Henry A. Wallace, vice-president; Harold L. Ickes, treasurer; and the Governor of the Farm Credit Administration. Its function is to purchase surplus products of all kinds for distribution among those on relief rolls.

activity. Prices were high in July 1933 because of the pseudo-inflation movement under way. The drop in August was in part a reaction to this and in part a response to the heavy output of butter. The rise in September was in part a reaction to the drop in August, in part a normal seasonal increase, and in part the result of the price pegging relief purchase operation. The drop in December-January was in part a reaction to the too high prices preceding, in part an effect of the lag in the movement of butter into relief, and in part a seasonal decline. The price of butter held around 24 cents or above most of the time from February on because butter production was low during the winter and afterward, 1934 production being 6.4 per cent under that of 1933.

PURCHASE AND DISPOSITION OF BUTTER, JUNE 1933-JULY 1934, WITH
MONTHLY AVERAGE PRICE OF 92-SCORE BUTTER, NEW YORK
(Butter data are in thousands of pounds)

Year and Month	Butter Purchased	Butter Distributed	Butter on Hand First of Month	Average Monthly Price (In cents per pound)
1933:				
June.....	—	—	—	22.8
July.....	—	—	—	24.5
August.....	1,505	—	—	21.3
September.....	3,016	—	1,505	23.6
October.....	8,861	—	4,521	24.0
November.....	17,370	—	13,382	23.6
December.....	12,480	3,300	30,752	20.1
1934:				
January.....	3,438	22,466	39,932	19.8
February.....	1,100	17,889	20,903	25.3
March.....	1,731	4,691	4,114	25.3
April.....	2,072	2,406	1,154	23.7
May.....	—	849	820	24.5
June.....	—	171	171	25.9
July.....	—	—	—	24.5

There is nothing remarkable about the pegging of the price at 24 cents from September to November. Any agency with adequate financial backing could do the same at any time. It need only buy all offered for sale below that price. By similar methods the Federal Farm Board had pegged the price of wheat and cotton for still longer periods. The principal difference between the Farm Board operations and the 1933 butter operations is that the Farm Board had to contend with a very elastic foreign market, a market that went to other countries for its supplies when our prices were held out of line with the world market. As a result, prices were probably depressed later by accumulated stocks as much as they were temporarily raised by the pegging operations. In the recent experience with butter a way of disposing of purchases was found from the start and prices were subsequently maintained.

The question still remains whether pegging the price at a definite point or simply purchasing when supplies begin to depress the market is the better procedure. The difficulty with pegging is that the price must be set exactly right or it will fail to accomplish its full effect: if set too low, the full possible price increase will not be realized; if set too high, such large stocks will presently accumulate that the price will need to be lowered, and this will so disrupt the market that very large purchases, even at the lower level, will be needed to restore it to order even on the lower level. Apparently the 24 cents for butter in September-November 1933 was about 2 cents too much unless the government planned to take more butter than it did.

Some have strongly advocated pegging prices and then disposing of the accumulated stocks by feeding them to

the market when prices are higher and supplies low. If government agencies are able to do a more intelligent job of storing and selling butter than are the regular commercial agencies, this procedure has advantages; but not otherwise. Some have advocated financing co-operatives and letting them conduct the holding operations. The experience of the Federal Farm Board in financing the holding operations of co-operatives should be a sufficient answer to such a proposal. It is true that one of the two butter holding operations which the Farm Board financed turned out well; but autumn stocks were low that year due to poor pastures. The two years of such operations proved a heavy drain on the accumulated surplus of the co-operative in question, and it discontinued its holding policy for the time being. At the time that butter buying was begun in August 1933, Land o' Lakes Creameries, Inc., was holding sizable stocks of butter, as were butter dealers generally. They had been led astray by the pseudo-inflation movement of the early summer. The increase in price to 24 cents, and the accompanying government purchases, greatly helped the co-operative and the dealers. The distribution of 68 million pounds of butter through relief channels probably increased total annual consumption by two-thirds this amount, or about 3 per cent for the year, which may have raised the average annual price to producers by a cent or two per pound, but probably did not raise it by more than a cent.

Should the government ever undertake to peg the price of butter, there are only two procedures which it can safely follow: (1) set the price at a level that will accumulate very small stocks of butter which can be sold readily when other butter is moving out of storage; or (2) plan to dispose of considerable supplies through relief outlets.

Other outlets suggested by Mr. Brandt are exportation at a loss and conversion to lower value uses, the losses to be made up through collecting an equalization fee on all butter sold. Should dairy production in the United States expand to the export point and the tariff duty become completely without effect on price, these devices could very well add more to price than the equalization fee would amount to. This is because they would sustain domestic prices at the European level plus some or all of the transportation cost to the United States, plus possibly a little of the tariff duty, rather than at the world level less the transportation cost to Europe. When production and consumption are entirely on a domestic basis, the amount added to income by government purchases when prices are low is likely to be largely, and in practice perhaps altogether, offset by the losses sustained on the accumulated stocks that are dumped. With production close to the import-export line, the effect would be between these extremes.

The government is open to some criticism for its delay in getting its relief purchase program in operation. However, in view of the many new points of policy and procedure to be determined before the Federal Surplus Relief Corporation could become operative, criticism can easily be unreasonable. There can be little doubt, however, that the final set-up was better than the early one. Had it been functioning in August the break in prices would not have come in November-December, nor would prices have been raised too high earlier.

Discussion as to whether the buying operations were more effectively executed by the Land o' Lakes organization or by the Dairy Marketing Corporation under orders from a committee in Washington, is largely beside the

point. Neither carried through an operation from beginning to end. One can only conjecture about what the final outcome would have been if the Land o' Lakes program had been continued under its own management, or what the government committee and the Dairy Marketing Corporation's program would have been like had it been in operation from the beginning. Moreover, the objectives of the two deals were by no means the same. In general it would seem that the actual technique of the market operations would be handled better under individual management, and that the underlying policy would be more wisely devised under the direction of a government committee.

At the outset the purchasing through sealed bids conducted by the Federal Surplus Relief Corporation was criticised as tending to depress the price; recently it has been criticized more as causing abnormal jumps in the price. Governments are seldom able by this method to buy more cheaply than are their private competitors in private bargaining. However, it is the only method of government purchasing that is ever reasonably safe from bribery and graft.

Price pegging with provision for disposing of any stocks incidentally accumulated, such as Mr. Brandt undertook to carry out in August-October 1933, would exactly fit the needs of his organization as he sees them.⁶ But whether butter producers would receive higher prices year in and year out if such a policy were followed is by no means certain. Clearly any undertaking of this character should be approached cautiously and experimentally. It falls in

⁶The Land o' Lakes organization pays its patrons for much of its butter before it is resold. Butter held in storage may be paid for months in advance of sale. Land o' Lakes therefore has to forecast the price which it will receive for its butter when sold.

closely with what the AAA has in effect done through cotton loans in the last two years, and with the program outlined in the recent amendments offered to Congress. These amendments suggest that the AAA would like to undertake a general program of price stabilization along with its production control.

Had the government been ready to purchase more butter, of course the price could have been 24 cents or higher. The volume of such purchases was determined by several factors including: (1) the amount of butter which the Relief Administration could use to advantage; (2) the unwillingness of Secretary Wallace to go further than to reduce stocks to normal, in keeping with the general policy of the AAA for all products; (3) the difficulty of financing. When Secretary Wallace made his commitment of advances up to 30 million dollars in August, he expected that the funds would be derived from the processing taxes that would be collected in connection with the production control program that he attached to that commitment.⁷ But no production control program that he considered adequate was brought forward by the industry. The legal staff of the AAA and the Comptroller had ruled that the 100 million dollar operating fund of the AAA could not be used except in anticipation of repayment out of processing taxes.⁸ Hearings were held preparatory to the collection of processing taxes; but none were ever collected. The dairy organizations promoting the purchasing program

⁷ *AAA Press Release No. 366-34*, Aug. 17, 1933.

⁸ 73 Cong. 1 sess., H. R. 3835 (Agricultural Adjustment Act), Sec. 12(a), p. 8, provides: "There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of this title. Such sum shall remain available until expended."

avored imposing such taxes and using the proceeds to buy surplus dairy products; but Secretary Wallace insisted upon some procedure for controlling supplies at their source. He was unwilling to undertake buying a surplus which he expected to be constantly renewed with dairy cattle numbers so much above normal. Except for the small amounts advanced out of FERA relief funds, no money was available for purchasing surplus butter until the Jones-Connally Act and the La Follette Amendment were passed on April 17, 1934. Out of what funds the early purchases of butter will be paid has not yet been determined.

THE EVAPORATED MILK AGREEMENT

An evaporated milk marketing agreement went into effect on September 9, 1933. Hearings on a proposed agreement were held in Washington on June 29. Wholesale prices of evaporated milk had declined to \$2.25 per case in the latter part of 1932, and to as low as \$2.10 in March 1933. Prices paid Wisconsin farmers for raw milk sank as low as 80 cents per hundredweight in June 1932, and in March 1933 were 14 cents under those of March 1932.⁹ Where might they not go by June? Faced with this situation, state authorities in Wisconsin called a conference of manufacturers and distributors who agreed that there would be no further price cutting. On April 19 another meeting was called in Chicago at which plans were made for drafting a marketing agreement. Prices to Wisconsin producers rose to \$1.02 in May, \$1.08 in June, and \$1.14 in July. They remained at this level until the agreement went into effect, and within a cent or two of it for the first three months under the agreement. The movement of wholesale prices of evaporated milk paral-

⁹ Wisconsin produces 40 per cent of the evaporated milk of the country.

leled exactly that of prices of producers, reaching \$2.51 in June (United States average) as compared with \$2.55 for the first month under the agreement. It would appear, therefore, that the price schedules set up in the agreement simply continued those which had been agreed upon in the spring in anticipation of a marketing agreement.

As presented in the agreement, the schedule of prices to producers was based on prices of butter in the nearest market, except that cheese prices were included in the base in the North Central states and New York. The country was divided into six regions for purposes of fixing producer prices. The wholesale prices were uniform for the country, f. o. b. jobbing points, except for overages (since removed) for high freight charges in a few distant points, and for a 10-cent advantage in the Northeastern states. This uniformity has been the subject of considerable discussion and doubt.

Maximum and minimum wholesale prices, 15 cents apart, were specified by the agreement, the former technically "to protect the consumer," the latter to prevent unfair price cutting. Actually this spread was provided to allow unadvertised brands to be sold for 15 cents less than advertised brands. This merely perpetuated a development within the industry. The smaller manufacturers had been able to make sales only by underselling the makers of the advertised brands. Until 1932-33 they had commonly undersold by as much as 25 cents. But at that time the larger manufacturers had begun to meet these cuts and a price war had developed, with the result that the spread almost disappeared for a time. Not all of the smaller manufacturers were satisfied with the 15-cent spread set up by the agreement and their objections were one of the

principal subjects for discussion at the hearing. Five of them, representing 5 per cent of the output, finally refused to sign the agreement for one reason or another. Several companies have since threatened to withdraw unless the spread is widened. The Dairy Section has made an analysis of the effect of this spread upon the relative volume of the business in advertised and unadvertised brands, but the results are not conclusive. Apparently the larger processors have consistently sold their advertised brands at the maximum price; but some of them have shifted more milk into unbranded or "second label" products. They may also have realized an advantage from being able to ship both classes of milk in the same cartons.

The non-signers have caused some difficulty by underselling. As is usually the case, they encroached on the business of a few signers, who at once demanded action. There has also been more or less violation of the wholesale price schedule by signers. Direct selling to retailers has afforded other opportunities for violation. There have been a few citations, but the cases have all been dismissed.

The agreement has a set of twelve trade practice rules covering secret rebates of all kinds, discounts, labels, advertising, brokerage charges, and transportation and delivery charges. A mere reading of this list reveals the difficulties of enforcement involved. Apparently no one has violated the producer price schedule in a very evident manner.

Administration is through a "managing agent" under the direction of a manufacturers' committee of eight named in the agreement. The agreement has been well administered in the sense that all the signers have paid their assessments and made the required reports on their operations. The producers' committee of eight set up to

confer with the manufacturers' committee as to prices has made some headway toward a satisfactory working basis. Except for the small dip in late 1933, the course of butter prices has been upward, and hence of prices paid to farmers by condenseries. The difference between prices paid to producers per hundredweight of milk and the wholesale price per case of evaporated milk was \$1.44 in the first two months of 1934 as compared with \$1.47 in 1933, \$1.48 in 1932, \$2.04 in 1929, \$2.26 in 1925, and \$3.11 in 1921. The ratio of wholesale prices of evaporated milk to butter prices was very low during the latter part of 1934. A new agreement was in the making. Since January, wholesale prices have been raised twice, by a total of 30 cents. The increase in butterfat prices in Wisconsin between September 1933 and March 1935 was 11 cents per pound, equal to about 39 cents per hundredweight of milk. Prices paid by condenseries in the East North Central states rose 30 cents per hundredweight in the same period; but the September 1933 price was 9 cents above that required by the marketing agreement.

In the negotiations and hearing on this agreement the National Co-Operative Milk Producers' Federation asked for a committee of nine, of whom four would be designated by a group of six milk producers' associations operating in condensery territory, and one by the Secretary, to act as chairman. The evaporators insisted that these co-operatives were interested almost wholly in fluid milk sales and were in fact constantly opposing the sales of evaporated milk, and that they certainly could not be properly assumed to represent the dairymen selling milk to condenseries. The AAA accepted their objections as valid, but allowed the Federation to name the separate producers' committee. With the present set-up, these pro-

ducers are able to present their case to the Secretary of Agriculture at any time through their committee, and the Secretary has power to veto any price change. The only protection which consumers have is through the Secretary.

The manner of making the two wholesale price increases has been somewhat irregular. In the first instance, the manufacturers' committee became impatient with the delay in obtaining final official approval after a favorable hearing and announced the increase without the Secretary's approval. In the second instance, they were even less patient. The evaporators explain their action on the ground that price increases must be announced without prior notice to prevent a flood of orders in anticipation of the increase.

In the meantime the AAA has been interested in dispensing with the resale price-fixing features of this agreement, partly because of its general policy on this subject and partly because of difficulties arising in connection with the maximum and minimum schedules and their enforcement. The discussions have recently eventuated in an agreement supported by a license which introduces the open-price system now in use in the dry skim milk agreement described below. Only about 70 per cent of the volume is represented in this new agreement. Not all the evaporators are in favor of the licensing provision, and the usual objections have been raised to the clause giving access to records.

At present the policy of the evaporated milk industry is to keep prices down and to expand consumption. Apparent consumption or trade output less exports has increased each year since 1931. Output of evaporated milk has been relatively large in recent months. For the year 1934 it was 10 per cent above that of 1933, although total

milk production was 4.5 per cent less. The Relief Administration purchased 38 million pounds during the winter. January-February 1935 output was 22 per cent greater than that of the same months in 1934, but this is no doubt due in part to a rush of orders in anticipation of the price increases.

THE DRY SKIM MILK AGREEMENT

The proposal for a dry skim milk agreement was first launched at the April 1933 annual meeting of the American Dry Milk Institute in Chicago. An industry-wide meeting was called in July, at which a committee was appointed to draft an agreement. The hearing was held on August 8, and the agreement signed on September 16. It is perhaps significant that prices rose sharply immediately after the April meeting. The agreement essentially sets up an open-price system under government supervision. Each manufacturer is required to file his price changes with the "managing agent" of the committee in advance of the changes, announce the same to the trade generally, and sell only according to his schedule. The agent at once informs all the other manufacturers. The Secretary of Agriculture may subsequently veto any change in price announced by any manufacturer. Much of the agreement is taken up with definition of the classifications to be used in the price schedules, and with trade practice rules. No price to purchasers is named, since the product is largely made from the residue of butter and cream manufacturing. The managing committee consists of twelve representatives of manufacturers, including five representing co-operatives producing skim milk powder as a by-product.

In signing the agreement the Secretary of Agriculture

pointed out that there were two sections which were not regarded as satisfactory, and he requested the governing committee to suggest modifications of these two sections. His first objection was to the apparent "freezing" of the method of distribution through jobbers. He also objected to the section apparently forbidding wholesale distribution in package form and permitting such distribution only by retailers. He suggested that the possibilities of increasing the retail sale of these products be explored, inasmuch as dry skim milk has been found to be exceedingly important in combating certain diseases such as pellagra. Research is under way on this point.

The agreement was supported by practically the entire dry skim milk industry. It was approved and signed by 80 co-operative and private firms manufacturing dry milk in more than 20 different states. There have been few complaints of violations.

CHEESE AND ICE CREAM

A proposed national cheese agreement, designed to cover all the leading commercial varieties of cheese, was submitted early in October 1933 for the preliminary review of the Dairy Section. It was sponsored by the National Cheese Institute, the National Cheese Producers' Federation, and other allied interests. A national control committee of ten members was proposed, five of whom were to be named by the Federation and five by proprietary interests representing the principal types of cheese. So much difference of opinion developed within the industry that no hearing was ever held.

The first relief purchase contracts were let in January 1934, and by the date of the last report the relief agencies had taken 14 million pounds of cheese. In the original pur-

chase program of the AAA, Secretary Wallace had agreed to buy cheese as well as butter. Dairymen in the cheese-producing areas had been inclined to criticise their industry leaders for failure to develop a production control program. An illustration of the discontent appearing in the cheese industry was the precedent set on August 17, 1934 at Plymouth, Wisconsin, when for the first time in the history of the Wisconsin Call Board every cheese factory in the state refused to accept the prices offered by dealers. Dealers insisted that cheese prices would have to drop if the large stocks in storage were to be moved, but the concerted action by the factories resulted in all bids being refused.

Recognizing the large accumulated surpluses in the domestic Swiss cheese industry, the Swiss cheese makers on August 6, 1934 declared a 30-day holiday throughout southern Wisconsin, where over 80 per cent of the domestic Swiss cheese is made. The Federal Surplus Relief Corporation took steps to relieve this situation by awarding contracts for 2,805,000 pounds of Swiss cheese, to be prepared as half-pound packages of processed cheese.

On August 10, 1933 a public hearing was held in Washington, D. C. on a proposed national agreement for frozen desserts, chief of which is ice cream. The agreement was proposed and drafted by the International Association of Ice-Cream Manufacturers, the membership of which, it was stated, sells in excess of 65 per cent of the frozen desserts manufactured in the United States. Parties to the agreement were to be the Secretary, the International Association, and any manufacturers who might sign. It was opposed in the main by representatives of the retailing manufacturers of ice cream. A governing body of 20 members, to be known as an "Emergency National Committee," was to be established. Twelve of these were

to be members of the International Association, five were to be producer representatives, and three were to be ice-cream manufacturers not members of the International Association. The chairman, secretary, and treasurer of the emergency committee were to be respectively the president, the executive secretary, and the treasurer of the International Association.

The suggested agreement provided that, in addition to the national agreement, affiliated agreements could be entered into by the Secretary with associations connected with the International Association. Each of these agreements was to clear through the emergency national committee and to provide that manufacturers signatory thereto would be bound by the national agreement. A set of fair trade practices directed against price cutting, rebates, sales below cost, and the like, was included in the proposed national agreement.

This agreement, together with the affiliated agreements, would have been far reaching with respect to price fixing. To begin with, the national agreement provided for minimum prices at which milk and cream should be bought for manufacturing frozen desserts. More important was the provision in the affiliated agreements for naming the minimum prices at which frozen desserts should be sold by manufacturers. It was contended by those in opposition that the terms of the national and affiliated agreements gave too wide powers in price fixing. The International Association of Ice-Cream Manufacturers maintained that the Secretary at all times would have final authority. The proposed agreement was approved by the Chief of the Dairy Section in September, but was held up by the Production Division and never reached the office of the Secretary.

THE BUTTER QUALITY PROGRAM

During the last ten months a new development has taken place in the dairy products program: the Dairy Section has been working with a group in the Far West on a butter marketing agreement directed toward improving the quality of butter by grading it and toward grading the cream purchased and paying for it according to a system of grade differentials designed to induce quality improvement. It is commonly believed that the spread between poor and excellent butter is not great enough, and that if consumers were able to purchase by grade they would pay more for good butter and less for poor butter. Thus an economic basis for cream grade differentials would be established.

Hearings were held on a proposed agreement in eight cities in eleven West Coast and Mountain states between March 25 and April 11, 1935. This proposal does not fix the price of butter, but does provide differentials between four grades of cream and four parallel grades of butter. It requires that all retail packages of butter be plainly labelled with the proper grade, under state or federal inspection, or both. A control committee of nine is to be set up. Much of the procedure proposed was based upon experience with a similar plan in operation in Oregon. At the hearings, the co-operative creameries mostly favored the plan and the centralizer creameries opposed it. It will probably not be carried through for the whole area nor in its original form.

CHAPTER XIII

THE PRODUCTION CONTROL UNDERTAKINGS

Although the principal means provided in the Adjustment Act for raising prices of farm products is control of output, little has been achieved or undertaken along this line for dairy products. The notable decline in milk production which set in early in the winter of 1934-35 is mostly, if not altogether, due to feed shortage caused by the drought. If the purchase program of last summer had not reduced the number of milk cows to be fed from the limited supply of dairy feed, the volume of production might have been no larger, since more of the feed would have gone into maintaining the cows and less into milk. The shortage of dairy feed was in some measure due to the restrictions on corn acreage; but the number of hogs was reduced more than enough to offset the reduction in corn acreage. Given the drought and no reduction of corn acreage and no hog or cattle purchases, dairy feed would have been scarcer than it was.

This failure of the AAA to adjust dairy production downward has come about in the face of a specific listing of dairy products as one of seven original basic commodities. It is the object of this and the following chapters to explain this failure, and to consider possible future developments in production control for dairy products.

It should be made clear at the start that failure of production control in this field has been due to no lack of interest within the AAA. Secretary Wallace set his staff to thinking about such control at the outset, and kept the matter in the foreground of attention all during the sum-

mer of 1933. As explained earlier, when on August 17 the group from the dairy industry called upon him urging measures to raise prices he conditioned his support of a temporary butter stabilization operation upon later development of a production control plan. In discussing stabilization operations at Muncie, Indiana, he again pointed out the need for controlling production or reducing the number of milk cows. At another point in his address, he said: "Two things which can save the dairy farmers during the next year are, first, the adoption of a real production control program, and second, a real increase in total payrolls in the city."¹ In an address at the New York State Fair on September 5 he had said:

. . . It is obvious that soon we must think more definitely of the way in which whole milk prices hit butter prices, and of the way that butter prices hit the walls around the milksheds. Dairy men should at once recognize that they have a problem in production control. If they fail to recognize this they need not expect indefinitely to get a continuous flow of agreements and licenses from Washington. Agreements and licenses are ultimately unenforceable if they are out of line with economic facts.

Dairy men may well consider the imposition of a processing tax in the near future, the proceeds of which tax might be used among other things to control production. The details of such a plan must come from the dairy men themselves. All we can do is to acquaint you with the facts and the powers of the Agricultural Adjustment Act. It is your duty to figure out how those powers can be applied to your situation. I am merely telling you here today that I consider licensing, agreements, and attempts at stabilization as merely temporary expedients to tide over a bad situation. If hooked into sound plans for balanced production, licensing and agreements have real possibilities of permanent usefulness; but there is no magic by which they can straighten out a situation which is out of balance at the base. . . .²

¹ *AAA Press Release No. 1067-34*, Nov. 14, 1933, pp. 2-3.

² *AAA Press Release No. 537-34*, Sept. 5, 1933, pp. 7-8.

Also, as explained in the last chapter, the Secretary called a halt on relief butter purchases in part because no procedure was in immediate prospect for checking the flow of excess butter. He felt that something must be done to make dairy producers realize that the government could not go on purchasing the butter and cheese necessary to support such prices as they were demanding. The new dairy policy announced in January 1934 was based fundamentally on such restriction of output; and true to the promises contained in this policy statement, the AAA presently offered the dairy producers a program for such control. The report of its abandonment will be presented in some detail below.

THE AAA CONTROL PROGRAM

The analysis of production control for dairy products begun under Dr. King's direction in the summer of 1933⁸ did not come to a conclusion in favor of the scheme of contracts, processing taxes, and benefit payments then being applied to wheat, cotton, and corn and hogs. The actual developments were in terms of control of milk production separately from that of other dairy products. Likewise, whatever conclusions may have been reached by the group which Dr. King called in from the states in the autumn of 1933 did not take form in a definite AAA program. Early in the winter a committee within the Department of Agriculture was set at work on the problem, and it was this committee's proposal that was announced on March 21, 1934, with a statement that during the following two weeks a series of 15 regional meetings would be held in order to permit dairy farmers to discuss it and make suggestions for its revision. The program was presented as an offer, its adoption to be left to the dairy farmers.

⁸ See p. 94.

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In arriving at its decision, the committee considered more than a hundred proposals from individuals and groups of producers that had been presented to the Administration prior to December 1. These proposals can be classified in six main groups as follows:

Reduction in cow numbers.....	46
Restriction of competing products.....	22
Restriction of volume of sales.....	7
Increase of consumption.....	7
Increase of the butterfat content of retail products.....	5
Miscellaneous.....	16
Total.....	103

The plan offered to the dairy industry was based on the payment of benefits to any dairy farmer who reduced his production 10 to 20 per cent below a quota based on his 1932-33 milk sales. Provision was made for payment at the rate of about 40 cents for each pound of butterfat involved in the reduction, and of \$1.50 per hundredweight of milk, within the prescribed percentage limits. A first payment would be made on acceptance of the contract and a second after six months. The plan would operate for one year, and all dairymen would be eligible to participate. It was expected that farmers with only one or two cows ordinarily would not participate. The method of making the reduction would be left to the choice of individual farmers. Provision was made for expending \$225,000 to assist dairymen in choosing the best reduction methods. Funds from which to pay the benefits would be derived from a processing tax on butterfat, which would be one cent a pound at first and gradually increase to 5 cents. A compensating tax would be levied on oleomargarine. It was estimated that the program would cost 165 million

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dollars, and possibly 300 million if Congress adopted pending legislation to aid the dairy and beef cattle industries. Administration of the program would be through county production control associations.

Additional features to supplement the program included the distribution of milk to underfed children, transfer of healthy cows from surplus areas to needy farm families having no cows (in nearby areas so far as possible), and provision for furthering the eradication of bovine tuberculosis. At least 5 million dollars would be allocated to each of these three undertakings.

RECEPTION OF THE PROPOSED PROGRAM

At the various regional meetings, this proposal met organized opposition from the National Co-Operative Milk Producers' Federation and local co-operatives. The Federation called a meeting of dairy co-operatives in Washington on March 21-22 at which opposing arguments were developed, and many of those attending went back to their states and worked up opposition among other co-operatives. The conclusions of this conference were issued in a Federation press release of March 23. The statement took the form of resolutions addressed to Congress which asked for passage of the Brandt plan,⁴ tariffs on fats and oils, and appropriations for removal of diseased cattle and relief purchases of dairy products.

The genesis and foundation of the opposition from the

⁴ The most essential features of the plan, proposed by Mr. John Brandt of Land o' Lakes Creameries, Inc., were as follows:

1. Purchase of excess stocks of farm products and disposal of them through dumping abroad, or in uses of a lower order in the domestic market, or through relief channels, the losses being assessed against producers in the form of an equalization fee of the McNary-Haugen type.
2. Price stabilization operations associated with the foregoing.
3. Reduction of excess agricultural output through a general program for leasing or purchasing submarginal land now in farms.

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Federation are revealed in the following statement issued by Mr. C. W. Holman, its secretary:

At the meeting with him on August 17, representatives of the Federation agreed to work jointly with the Secretary or his representatives to develop as rapidly as possible a comprehensive production control program. Representatives of the Federation did confer with such persons as they could find in the Department of Agriculture who showed an interest in production control; but notwithstanding the fact that written communications were sent to the Secretary stating that we were ready to confer at any time, at no time were we ever informed that any person or persons had been specifically authorized to work with us on such a program.

Accordingly, the Federation, desiring to carry out the spirit of its pledges at its annual meeting in Chicago on October 9, 10, and 11, endorsed the principle of production control and authorized the appointment of a special committee to submit a plan to the directors of the Federation. Extensive researches were made, and numerous conferences were held with individual officials of the Department. The report of the committee was adopted by a special meeting of the directors of the Federation, together with members associations; and this report was officially submitted to the Secretary of Agriculture on December 5.

The report itself embodied a comprehensive eight-point plan based in part upon the historic policies of the Federation and included as its cardinal features:

- (a) The home market for American farmers.
- (b) Protection of dairy farmers from the planting into feed crops of lands taken out of production by rental benefit payments made with respect to other farming industries, such as cotton, corn, tobacco, and wheat.
- (c) A far-reaching program involving land classification and the taking of sub-marginal and marginal land out of cultivation by means of its acquisition and restoration to the public domain.
- (d) The elimination of diseased dairy cows and diseased beef cows, which would materially reduce the sum total of milk production.
- (e) As a final resort, the consideration of the quota or allotment

principle, acreage reduction or such other control programs as might seem most feasible if the suggestions already outlined fail to achieve their purpose.⁵

Apparently the Department committee working on a plan of production control saw no purpose in calling this group into a conference.⁶ To the committee the problem was not one of reconciling conflicting interests, but of devising an effective plan of action. Its members knew that the Secretary did not consider the eight-point program as sufficient for the needs of the occasion, and no doubt mostly agreed with him.

The regional differences in attitude toward the proposed plan are worth considering even though they were influenced strongly from without. In the Northeastern states, the area within which market milk is clearly dominant, the prevailing attitude was opposition. At the Syracuse (New York) meeting, only one spokesman in its favor appeared. At Philadelphia and Boston, clearly favorable opinion appeared before the end of the sessions, but the tide ran the other way. Commissioner of Agriculture Baldwin led the opposition in New York, taking the stand that New York did not need to reduce its dairy output, since three-fourths of it was used as fluid milk and cream. He said that the AAA program thus far had meant only higher feed prices for Eastern dairymen; that the proposed plan would make the people of New York pay \$21,550,000 in processing taxes, in return for only \$7,400,000 in benefits; and that he was disposed to consider the matter from a purely sectional interest standpoint since the AAA program had been sectional to date. Mr. East-

⁵ *A Statement Concerning the National Situation*, Dec. 21, 1933.

⁶ The problem of production control for the whole cattle industry was discussed at conferences in which the dairy interests participated. See D. A. FitzGerald, *Livestock under the AAA*.

man of the *American Agriculturalist*, a New York farm journal which had been attacking the AAA from the outset, said there was no over-production, but only under-consumption, and that the problem should be attacked from the standpoint of marketing and advertising. Mr. Sexauer of the Dairymen's League contended mainly that uniform reduction was unfair to any co-operative which had been active in reducing the output of its members during the past three years, and to many individual farmers. Several at the New York meeting objected to the proposal to transfer cows to cowless farms.

Those who favored the AAA program elsewhere in the Northeast believed that there had been over-production of fluid milk in their areas, that the proportion of milk going into Class II and lower had increased greatly, and that they would benefit from a small reduction along with other dairy farmers. Some also maintained that the dairy problem must be considered as a whole, and that sectional selfishness was out of place.

At the Indianapolis meeting, most of the talking was by representatives of co-operatives, who followed the same lines of attack as elsewhere. However, when a vote (unrecorded) of producers only was taken on the second day, at least three-quarters favored a reduction program worked out by the AAA. Even the Ohio representatives in a separate meeting went on record two to one in favor of a reduction program, but asked that the allotment arrangements be changed. There had been considerable sentiment for a reduction program among the butterfat producers before the meeting.

At the Madison meeting the organized opposition was not so much from fluid milk co-operatives, which are relatively unimportant in the state, as from the Wisconsin

Dairymen's Association, whose president, Mr. Paul Burchard, is connected with *Hoard's Dairyman*, which had been opposing the AAA program generally. The strongest opposing arguments were in terms of the unworkableness of a quota system applied to dairying and of the incidence of the processing taxes upon the producers. An unusual amount of foolish argument arose to the effect that the price of butter has no relation to the supply and that consumption can be increased almost regardless of price. Even the Dairymen's Association offered a statement favoring a government guaranty of cost of production before attempting a reduction program, and the State Division of Markets took a similar tack. The principal alternatives proposed were purchase of diseased and low-producing cows, government relief purchase of dairy products, protection of the markets against butter substitutes, government purchase of sub-marginal lands, educational programs to expand consumption, and improving the quality of the product.

The representatives of the farm organizations, however, gave substantial support to the plan, and the vote taken, not directly on the plan, but on production control, was 342 for and 153 against. This vote was on the second day after the discussion was concluded. A separate vote on processing taxes was 293 against and 189 for. This apparent inconsistency is partly explained by the fact that many producers believed in financing by some other means a program of production control that would eliminate diseased or low-producing cattle. A strong presentation of the need for Bang's disease control had been made; and the Dairymen's Association, *Hoard's Dairyman*, and Dean Christensen of the College of Agriculture had been promoting a program of subsidizing cow-testing association

work, accompanied by government aid in disposal of low-producing cows. Part of the opposition to processing taxes was due to the belief that the producers would pay them in lower prices, this belief being engendered by the experience with the hog processing taxes up to that time, and by a vigorous attack on such taxes at the conference. To understand the Madison conference, one must realize that the Wisconsin dairy interests inwardly felt that this program, in calling for the same reduction from the older as from the newer dairy areas, was unjust to them.

The St. Paul meeting was held in the heart of opposition territory. The Land o' Lakes and the Twin City Milk Producers Association organizations had disseminated criticism of the AAA program among their members through their official organs, through the mails, and through their field workers. Both held sessions of interested members in advance to lay plans for the conference. The leaders of the two organizations, Mr. Brandt and Mr. Moscrip, attacked the AAA proposal at length and presented their counter-plans for distribution control and dumping of surplus products and for exclusion of foreign fats and oils. However, enough dairy farmers came to the meeting from beyond local producer association territory to vote down the proposal from the organization group for a resolutions committee, and the only show of hands called for at the conference indicated only a slight majority in favor of the Brandt plan, with at least one-fourth not voting. On the second day, many of the farmer talks favored the AAA plan, in spite of counter-attacks; but many also favored the Brandt plan as a goal for the future. The meeting can probably be summarized by saying that a clear majority favored the AAA dairy plan, but with the understanding that it would be followed

or supplemented by the Brandt plan as soon as Congress passed the necessary legislation. Mr. Lauterbach had insisted that additional legislation would be required.

Here also the opposition speakers stressed that there was no over-production and that the extra hundred million pounds of butter in storage in the autumn could readily be disposed of in various ways. Mr. Lauterbach attempted to make clear that the excess production was not this small amount, but what would be needed to raise the price of dairy products to the level desired. That the quantity of butter consumed depends upon the price at which dairy farmers are willing to produce it is something that the exponents of the Brandt and similar plans were unable to comprehend, or that they chose to ignore, believing that dairy farmers generally were not likely to realize it.⁷

The part of the Brandt proposal that calls for reducing production in general by taking land out of use, especially sub-marginal land, also received considerable attention at this conference. The processing taxes were not much attacked at this meeting, Mr. Brandt even advocating "equalization fees" as a substitute, these to come wholly out of producers' income.

Opinion in other states in the two rows west of the Mississippi, from Des Moines to Dallas, was strongly for reduction of production. But shortage of feed and conditions in the beef cattle industry led to suggestions of other methods of attaining it. At Kansas City, for example, there was strong opinion in favor of reducing the number of milk cows rather than leaving it to the individual

⁷ The statement issued by the Federation on March 23 contained the following: "Milk production in the United States is now less than one per cent above domestic requirements, yet the proposed plan calls for a voluntary reduction of 15 per cent."

farmer to reduce output in any way he saw fit. In effect, this procedure would have involved paying a premium to induce extra culling. Mr. Holman personally attended some of these meetings, but the milk co-operatives were not important enough in this region to dominate opinion. At the Portland conference, the co-operatives did not all oppose the plan and the vote was 106 to 17 in its favor. In the Rocky Mountain states, what dairying is found is widely dispersed except immediately around the cities. Hence at the Salt Lake City meeting the producer association leadership was much in evidence. The rank and file of producers, however, made their position in favor of the plan well known. The Denver conference clearly favored the proposed program. At Berkeley, opinion was divided.

In the Southern states the producer-distributors and dealers were much in evidence and generally opposed production control. At the Atlanta conference, the point of view that here was a deficit area for dairy products where no reduction could reasonably be asked, easily dominated the situation. At Memphis, however, enough dairy farmers interested in manufactured products were in evidence to swing the meeting clearly toward production control. Experience with cotton and tobacco control predisposed most Southern farmers to favor the proposal.

THE AAA COURSE OF ACTION

The representatives of the Department of Agriculture sent out to present the proposal to the 15 conferences were instructed to present the facts as to the dairy situation and outlook, explain the program offered, and get the reactions of the dairy farmers to it, and their suggestions of changes. They were told not to argue in favor of the proposed plan, or even to defend it, but rather to make it understood.

When they encountered an opposition group with a well-developed attack upon it, they departed from their instructions more or less at many of the conferences. At those in the Mid-West, they contented themselves with answering questions and trying to correct some of the major misunderstandings. Mr. Lauterbach even conveyed the impression at Madison and St. Paul that he did not favor the plan himself, and at St. Paul went so far as to say that he liked the Brandt plan except for the fact that it could not be undertaken without legislation that he did not think Congress would pass, at least in the near future. At other of the conferences, those in the Northeast, for example, the Washington representatives felt that the situation which they encountered called for active defense of the proposal; and their efforts had considerable effect upon opinion. It seems clear at this distance from the event that had the AAA done a good job of presenting the plan and the supporting analysis of the dairy situation and outlook at each of the conferences, majority votes in favor of it could have been obtained at all but four of the regional meetings, even taking account of the extent to which the fluid milk producers flocked to them. Had the proposal been for uniform reduction of production, the exact method to be worked out promptly with regional committees, the support would have been clearly dominant everywhere outside of the strictly fluid milk areas.

One must not conclude from the foregoing that the dairy farmers were enthusiastically in favor of reducing their output at this time. But a dominant majority of the rank and file of those serving creameries, cheese factories, and condenseries was ready, although passively in a majority of cases, to go along with the AAA on a program for dairy products roughly such as was in force for cotton, wheat,

tobacco, and corn and hogs. Even a majority of some groups of fluid milk producers was ready to co-operate. Had the AAA decided to go forward with a plan such as offered except for some minor changes that the conferences had indicated were needed, the necessary number of contracts would have been secured.

The AAA officials were fully aware of the foregoing; and after-events indicate that the Federation officials were likewise aware of it. Hence the situation was such that a procedure like that followed in working out the corn-hog programs, but more thorough and systematic, would have produced a plan almost as generally acceptable to dairy farmers as was the corn-hog program to those affected by it. It would have consisted of having representative regional committees set up, and going out and working with these, and finally working with a central committee set up by the regional committees.

However, the AAA officials failed to take advantage of this opportunity. The reasons for this can only be judged. Some of the officials were disposed to use the opposition that had developed as an excuse for not taking on another and more difficult control program on top of those they were then struggling with. Many in the AAA had grave doubts as to whether a dairy control program could be made to work without much contention over base production quotas and benefit payments. Others were merely following the administrative strategy of playing for time—waiting to see what happened to production and prices, and if prices declined as expected, what response would come out of the dairy areas, and what the Federation would then have to propose. A third reason was the irritation toward the Federation that had arisen, which either blinded the officials to their opportunity or kept them

from wanting to work with it and its local affiliates on regional and central committees. Developments in the AAA program since last spring, and the amendments to the Adjustment Act recently agreed to, indicate that a procedure could then have been developed which would have compromised the differences so far as then possible under the act; and the compromise would have been an improvement upon the plan first offered. If the drought had not come, probably such a compromise would have been arranged during the summer.

On April 23 a press release announced that "the Agricultural Adjustment Administration will not undertake a benefit payment dairy production control program for the present at least . . ." or until "such time as the dairy industry is substantially agreed upon production adjustments."⁸ The opposition was definitely attributed to "central leadership" that "developed before the proposed program was taken to the farmers for discussion." The policy of the AAA in the meantime, it was announced, would be limited to such purchases of dairy products for relief purposes and such reduction in numbers of diseased cattle as Congress made possible by appropriations. Under the act, no processing taxes could be collected, it was emphasized, without production control through benefit payments. No adjustment program would be undertaken for part of the industry, and no "large-scale stabilization and price fixing" would be undertaken without means to stay the increasing production sure to follow. The announcement stated that the Administration's proposed program had been designed to be national in character, of benefit both within and without milksheds, and that in the absence of such a program the pressure of outside milk was likely to increase on city

⁸ AAA Press Release No. 2412-34.

markets, the milk licenses would then be less effective, and milksheds would contribute more manufactured products to the supply.

In some dairy sections, the discussion of production control continued for several weeks; but presently the drought began to produce its effects, Congress made its large appropriations for purchase of cattle, and interest in production control was dead for the time being.

EVALUATION

As conditions in the industry have developed since, the AAA is very fortunate in not having had a dairy production control program under way. But the merits of the proposed program must not be judged in terms of how it would have worked in the worst drought in recent history. Granted that it could have been carried out as planned and with average crop yields, it would have reduced production and raised prices more than enough to offset the depressing effect of the processing taxes. Butter prices would have been high enough to support the fluid milk prices provided in the licenses approved during the spring and summer.

In fact, one of the points of easy vulnerability in the proposal was the size of the proposed reduction, for even a 10 per cent reduction in a product that seldom accumulates over a month's supply is likely to prove radical. Creamery butter production in 1934 was only 6 per cent less than that of 1933, but average butterfat prices in 1934 were 3.9 cents (or 21 per cent) higher than those of 1933. Butter output in the first three months of 1935 was 11.6 per cent under that of the same period in 1934, and prices were a half higher. With the butter supply definitely limited by the feed supply, prices have risen behind the 14-cent tariff barrier. They have apparently been held

from rising further only by the height of the barrier and by the rapid substitution of oleomargarine during the past winter. This experience qualifies considerably the usual statement of butter analysts to the effect that prices and supply tend to vary in equal proportions. Apparently with a short supply behind a high tariff barrier, the price increase is considerably more than proportional to the decrease in supply. But this does not validate the arguments of the opposition that only a one per cent surplus existed. The "surplus" would be whatever reduction was needed to raise prices to the level desired.

One can readily understand why certain of those opposing production control assume a much greater increase in the price of butter with decrease in its supply than commonly occurs. Even in ordinary times, the speculative market's first reaction is to exaggerate the response to changes in supply and demand for butter; in the present situation, the exaggeration has been increased by the sharp turns of the speculative market as supply conditions have altered their complexion, as business sentiment has wavered, and as artificial controls have been imposed and withdrawn. To obtain a correct conception of the supply-price relationship, one must deal with averages of months and whole years under the more usual conditions.

The most important questions relate to the workableness of the control plan proposed; and as to this a large measure of doubt must still remain. The statement by the Federation on this subject was as follows:

Farmers with small herds who produce over one-half of the milk in the United States present a problem which no plan of this type can adequately deal with. The processing tax can be evaded, production increased, milk shifted from home consumption to commercial channels, etc. These farmers now depend more on pasture

than any other group and produce less milk per cow. They cannot economically reduce production by the amount called for in the plan, but they can readily increase production.

One cannot reasonably accept the contention of the Eastern dairymen that they are producing in a deficit area and should not reduce their production. New York State has no claim on New York City as its particular market property any more than Massachusetts has upon Boston. Both cities derive their income from the whole nation, and would be poor indeed without the nation to draw upon. Neither can all the claims of co-operatives of having reduced their production be taken at full face value. In March 1934, most of them had 15 per cent or more of their milk receipts going into Class III and Class IV uses. Nevertheless, a program of dairy production control needs some adaptation to fit conditions in Eastern fluid milk areas, and probably should be formally combined with the rating plans employed by milk co-operatives.

If control of dairy output through contracts and benefit payments is to be undertaken, the plan of paying the benefits on the 10 to 20 per cent of milk or butterfat not produced at a rate somewhat exceeding the market value of such milk or butterfat is probably as good as can be devised. But probably the rates will need to be adapted to areas if the same response is to be expected in all of them. The rates in this case were made high enough to cover all milk going into Class II and lower uses; but they would have been a special inducement to reduce output in the low-price and hence low-cost areas.

The plan for purchasing cows and transferring them to needy families to provide milk and butter for family use met with little opposition at most of the conferences. If properly guarded and handled, it was even approved by

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the Federation in its press release. The AAA outlined such a plan of handling it in a special release on March 29.

The major criticism of the control proposal is on the score of the manner of its development and presentation. In working out the other programs, especially after the first two or three, the AAA conferred constantly, both in the field and in Washington, with groups of the most interested and best informed producers, handlers, and processors. When it began working on dairy products, however, it found a strongly organized group already in operation with definite points of view and a program by no means altogether consistent with the AAA objectives. To have accepted this group as representing the whole dairy industry would not have been fair to the rank and file of dairy farmers. Moreover, it would not have been in keeping with the methods that had proved successful with other programs. Nevertheless, the AAA could have worked with the local representatives of this organized group on regional committees, according them a voice in proportion to the volume of dairy production which they represented. That this mode of procedure was not adopted was probably as much due to the tactics of the organized group as to those of the AAA officials; and the tactics of this group derived in part from great confidence in its ability to force its will upon the Administration and the country.

That the AAA was wise in not going forward with production control for dairy products in view of the drought that developed has already been affirmed. That its decision not to go forward with it, because of the opposition and for the other reasons mentioned above, would have proved wise had the drought not developed, is another matter. The writer's judgment at the time was that the program should be dropped for the time being. He still

thinks that such a course of action would have proved best. But here he is entering the realm of pure judgment. The answer depends (1) upon whether production control of the contract and allotment type is feasible and would prove beneficial for dairy products, and (2) upon whether the situation would have been propitious for it in the summer of 1934 even without the drought. These questions are discussed in Chapter XIV.

RELATED BEEF CATTLE CONTROL MEASURES⁹

The cattlemen opposed making beef cattle a basic commodity in the original drafting of the Adjustment Act, and during 1933 concentrated their efforts on securing a marketing agreement with the packers, which agreement was never completed. In the spring of 1934, however, they helped secure the passage of the Jones-Connally Act which placed beef cattle in the basic group. The discussion of the measure and after-events both make clear that the cattlemen did not really want a scheme of contracts, processing taxes, and benefit payments. They were primarily interested in the 200 million dollar appropriation which it authorized. This was to be shared with the dairy industry. Many of them considered that they were entitled to an outright appropriation as compensation for the increased feed cost arising from the AAA program.

The language of the Jones-Connally Act is far from clear as to procedures to be employed, but the AAA took the stand that benefit payments could not be paid without production control and processing taxes. At a preliminary conference in Chicago in April a Committee of Twenty-five, which included representatives of the dairy interests, was set up to work with the AAA in developing

⁹ The cattle control measures are outlined in more detail in Chaps. IX and X of FitzGerald, *Livestock under the AAA*.

a plan for administering the Jones-Connally Act. By May, this group, working with AAA representatives, had developed a plan which included a graduated processing tax increasing by October to 50 cents a hundredweight on beef or dairy cattle sales, the income from which was to finance benefit payments on sales, especially sales of breeding females. Its approach to production control was to reduce breeding stock and feeding operations. Mr. Fitzgerald's analysis in *Livestock under the AAA* indicates that the scheme would not have worked in the form proposed, but that possibly a feasible plan would have been framed later in conference had not drought relief taken the center of the stage. It is important to note that dairy representatives assisted in developing this plan.

The first announcements of a proposal to purchase cattle and otherwise aid the drought-stricken areas were made on May 14 and 15.¹⁰ The Jones-Connally Cattle Act passed on April 7 had authorized the appropriation of 50 million dollars that could be used in part for such an undertaking, and 200 million dollars more to finance production control and surplus reduction and "to support and balance the market."¹¹ A drought relief service organization was set up on May 21; two days later, 121 counties were certified as "emergency drought" areas, and 91 as "secondary drought" counties. By October 13, 1,457 counties had been thus certified. The first cattle were purchased on June 12, and from then until early August the buying proceeded rapidly and even recklessly. A special committee was set up at this time which called a halt while a reckoning was being taken, and it presently reduced the undertaking to a

¹⁰ AAA Press Release No. 2580-34.

¹¹ On June 19 Congress appropriated 450 million dollars specifically for drought relief, of which at least a fourth was designated for purchasing and processing cattle and distributing the product.

more orderly and rational basis. A schedule of purchases was set up designed to reach a total of 7.5 million head on November 15. But demands continued from one district after another, and additional quotas were assigned, so that not until January 1935 had operations finally ceased. Producers were paid 112 million dollars or an average of around \$13.50 per head. The maximum of \$20 paid was fully equal to the market price of milk cows in the Western states; and likewise were the prices of \$4 to \$8 for calves and yearlings, and \$10 to \$15 for heifers, equal to the market prices. The cost of buying was about 60 cents per head.

To the foregoing must be added the purchase of cattle in connection with the disease eradication program, for which 30 million dollars was made available in May 1934. From July 1, 1934 to May 31, 1935, nearly 3 million cattle were tested for Bang's disease (contagious abortion) and 350,000 reactors were found and slaughtered. In the same period, a total of 358,000 out of 22 million tested were slaughtered because of reaction to the tuberculosis test. The organization for testing Bang's disease now set up is capable of handling more than 400,000 cows per month. In April 1935 it tested 421,000 cows and found 45,000 reactors.

The total number of cattle purchased by the government was 8.3 millions. The January 1935 inventory showed that cattle numbers had been reduced 7.6 millions during the year in spite of a large calf crop. How many of the 8.3 millions were of milk stock can be determined only roughly. The buying agencies were asked to classify their purchases and a summary of their reports for eight states shows 67 per cent "beef," 15 per cent "dairy," and 18 per cent "other"; but these eight states did not include enough

of the more eastern territory to give dairy cattle a proper representation. More than three-fourths of the purchases were made in the largely range states, and most of the remainder in territory where the milk cows are of dual-purpose breeds. Very few were purchased in Illinois and Wisconsin—for example only 2,000 head in Illinois. It is doubtful, therefore, if much more than a third of the cattle purchased were of milk stock. Much of the reduction of 2,220,000 head of milk stock in 1934, therefore, was outside the “certified” drought areas; but it may have been induced in part by short feed crops in many dairy states east of the Mississippi. No doubt the drastic change to a low ratio of butterfat to feed prices noted earlier (page 74), itself induced by the drought, was a general cause operating even in territory where rainfall was more nearly adequate.

Much of the reduction in herd numbers would therefore have come without any purchase program. Mr. Fitzgerald has estimated an increase of 2.5 to 3.0 million head in federally inspected slaughter without any government buying. Account must also be taken of the fact that 1.3 million head were condemned as unfit for consumption and would have disappeared in any case. The \$10 to \$12 per head paid for such animals was therefore in part a gift. Also, without government purchasing and canning for relief disposal, the market price for low-grade cattle would no doubt have been much lower than it was. The situation was so serious that Congress no doubt would have voted some form of relief even if no adjustment program had been in progress.

A detail of interest in connection with the cattle buying is that the AAA required all those selling cattle to the government to enter into a contract to participate in any plan of production control for the cattle industry that

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might be offered before June 1936.¹² One part of the payment for cattle was called a benefit payment and was not made subject to attachment by creditors.¹³

¹² See FitzGerald, *Livestock under the AAA*, Chap. X, for discussion of the controversy that arose over this.

¹³ The writer is much indebted to the resident observers working on this project for information presented in this chapter. These observers attended the 15 regional conferences and made written reports upon them, which they supplemented with clippings from local newspapers and regional farm papers.

CHAPTER XIV

THE PROBLEM OF PRODUCTION CONTROL

With the recent court decision imposing serious limitation upon the use of marketing agreement and licensing devices, the AAA may presently be turning again toward production control for dairy products. We need, therefore, to canvass its possibilities more widely than in the last chapter. But first let us consider more carefully the need for it and the nature of the problem to be solved. This is best essayed by taking first the more nearly normal developments in the dairy industry. We shall then be able to judge better the nature of the immediate problem and the measures required to meet it.

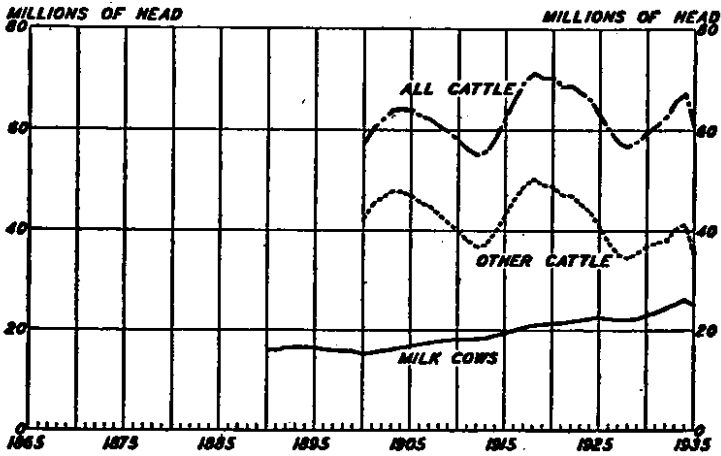
VARIATIONS IN SUPPLY

First to answer is the question whether the irregularities in output and prices of dairy products warrant any general or continuing program of control of production in this field. The usual statements are in terms of a "dairy cycle" that is supposed to give us a great excess of milk cows in some years and corresponding deficits at other times. The chart on page 398, however, indicates that if this is a cycle at all, it is an "other cattle" cycle rather than a dairy cattle cycle. The line for milk cows (including dairy heifers two years old and over) rises steadily with only a slight dip in 1926-28 coincident with the low point in the "other cattle" cycle, and a still slighter one in 1911-14. Such coincidence as occurs is easily accounted for by the fact that the dairy cattle classification includes several million dual-purpose cows which are subject in part to the

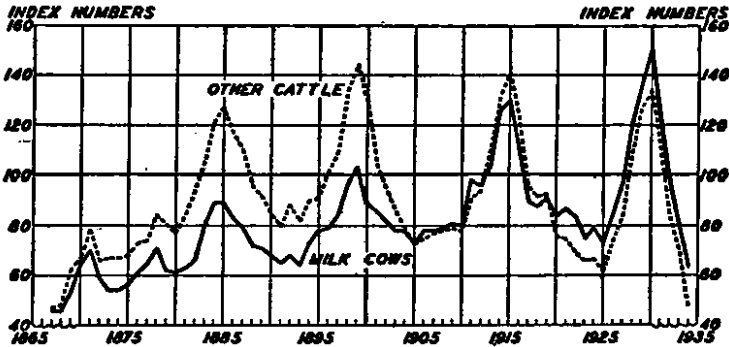
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MOVEMENTS IN NUMBERS AND PRICES OF MILK COWS AND OTHER CATTLE *

I. Numbers of Milk Cows (1890-1935) and Other Cattle (1900-35)



II. Prices of Milk Cows and Other Cattle, 1867-1935 (1910-14 = 100)



* Milk cows include dairy heifers two years old and over. "Other cattle" include dairy calves and heifers under two years old. The data are from the *Yearbook of Agriculture*, U. S. Department of Agriculture, and recent issues of *Crops and Markets*.

same influences as are beef cattle. Moreover, it is highly probable that when beef cattle numbers are low, as at the two periods named, a larger proportion of the dual-purpose cows are reported as beef cattle. The circumstance that the movements of prices of beef cattle and dairy cattle appear to run together, indicated in the lower part of the chart, supports a theory of beef cattle and dairy cattle cycles coincident with each other; but analysis of the data strongly suggests that the prices reported for dairy cows really reflect the conditions of the beef market rather than the dairy product market.¹ We apparently do not have any price series for strictly dairy cattle, and even if we had one, it would reflect the beef cattle market in part because of the effect of this market in shifting dual-purpose cows and heifers to and from dairy production; also because of its effect on the carcass value of dairy cattle culls. The truth of this is attested by the fact that the actual correlation of butter price movement with the reported prices of "other cattle," from which dairy cattle are largely excluded, is as good as it is with the reported prices for dairy cattle.

Apparently a point tends to be reached in the decline where continued heavy slaughterings, accompanied by reduced breeding, reduce the supply to an acute condition of shortage, and prices of cows and young cattle then rise sharply. Such points were apparently reached in 1885, 1899, 1915, and 1930. By that time, however, cattle numbers were increasing again, so that the effect of the high prices was merely to give spur to the increase. Once the acuteness of the shortage is over, the prices drop equally rapidly.

As to whether or not there is a true beef cattle cycle, with

¹ The price data, available for a longer period than the data on numbers, indicate that somewhat the same influences were at work before 1900 as after.

periods as regular as indicated in the chart, price analysts do not agree. One group maintains that conditions within the industry itself perpetuate a constantly recurring regular cycle, its length being determined by the time it takes (1) to re-establish depleted breeding herds and rear their increased offspring, after the cattle raisers have made up their minds to do so, and (2) to deplete these herds in the downswing by selling both offspring and breeding stock after producers have decided to do so. Obviously not all cattle raisers will decide at one and the same time to make these changes; hence the processes of change drag out, but they drag out similarly in the recurring cycles. Another group considers that the impact of outside events—such as expansion into new areas, improvements in methods, competition of other products for land or for markets, wars, droughts, and the like—is responsible for initiating movements one way or another, but that once started they tend to follow a certain sequence, the timing of which is conditioned, but not absolutely determined, by the internal forces just named. The actual incidence of the highs and lows in swings in cattle numbers will therefore be the compound result of the occurrence of the impacts from the outside and of the effects of the internal conditions. This group maintains that the regularity of the past 40 years is in part due to the accidental equal spacing of outside impacts. It expects to see more irregularity in the spacing in the future, and also more flexibility in the internal factors and quicker responses.³

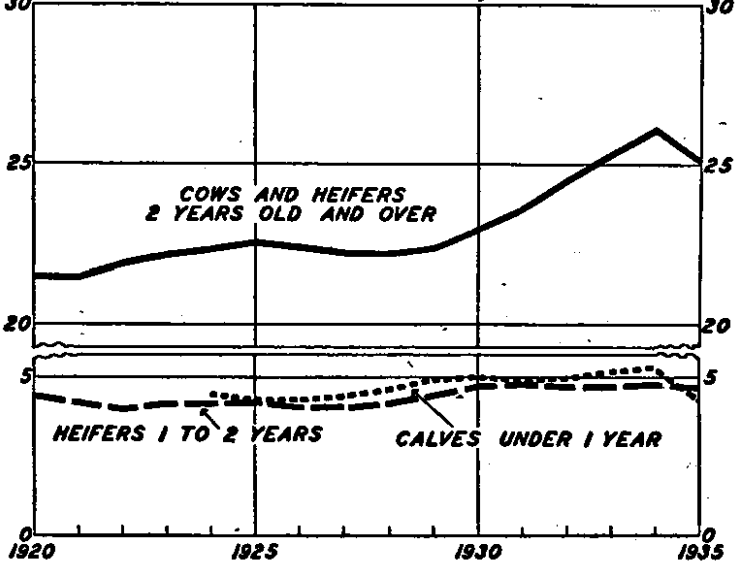
Unfortunately, data on dairy animals by age classes have not been available by years for a sufficient period to throw much light on the foregoing. The accompanying chart

³ This matter is discussed somewhat in D. A. FitzGerald, *Livestock under the AAA*.

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presents such data for recent years and suggests that changes in numbers of calves and young heifers, as one would expect, do anticipate changes in numbers of cows in a period of expanding herds, but that the large increase since 1930 must have been due to other factors such as delayed culling and shifts from "other cattle."

CHANGES IN NUMBERS OF DAIRY ANIMALS, BY AGE CLASSES, 1920-35^a
MILLIONS OF HEAD **MILLIONS OF HEAD**

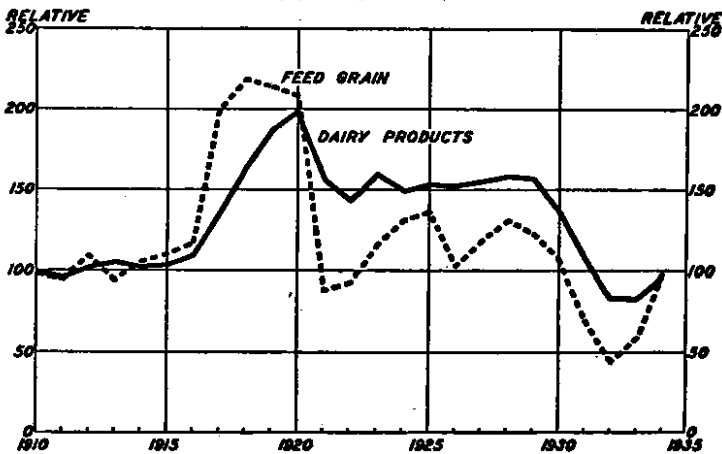


^a Data are from the *Yearbook of Agriculture*, U. S. Department of Agriculture, and from recent issues of *Crops and Markets*.

The increase in number of dairy cattle since 1929 also needs to be considered in connection with the butterfat-feed ratio situation in this period. The early and sharp break in feed prices in 1929 created a situation even more favorable to dairying than had prevailed during the decade. The changes in the ratio between feed grain and dairy products from 1930 to 1932 shown in the accompany-

ing chart, evident also in an earlier chart (page 74) might easily account for the raising of more dairy calves apparent in 1932 to 1933, and the reduced rate of culling in these years. Was this development a characteristic cycle phenomenon, or an episode in the present general depression?

COMPARISON OF MOVEMENTS OF PRICES OF DAIRY PRODUCTS AND
FEED GRAINS, 1910-34^a
(1910-14 = 100)



^a Summary of Dairy Situation Statistics, U. S. Department of Agriculture.

The data suggest the latter. A similar effect was apparent in mild measure in 1921-25 in spite of opposing influences.

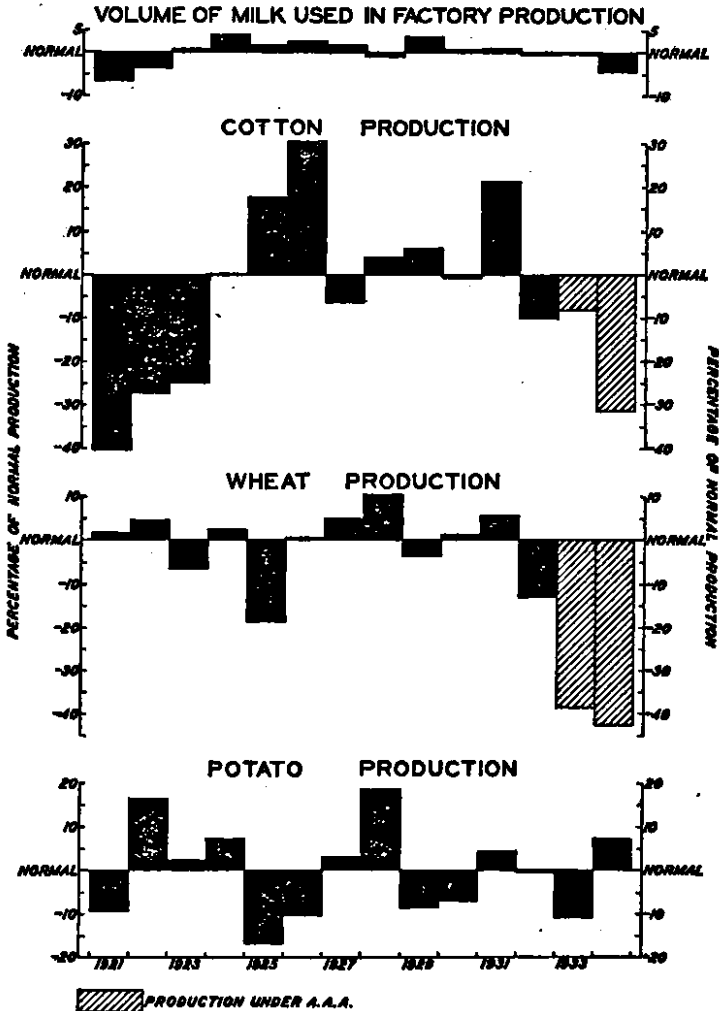
We may conclude, then, that the increase in total cattle numbers since 1928 can be explained mostly as the upswing in a beef cattle movement, rather slower than usual, considering the specially favorable feed situation, and hence suggesting a downward secular trend in beef cattle production, or else a shifting of dual-purpose cows to the dairy classification. No doubt the increase in sheep raising on the ranges has also been a factor. Probably the increase in dairy calves raised beginning in 1927 contributed a little to

the increase in "other cattle" in 1928-30 and again in 1933-34.

As for the dairy situation, the increase in milk cows since 1928 seems to be primarily the continuation of a trend of long duration. If there is a larger gain than the trend explains, of which we cannot be altogether certain, it may be accounted for as a reaction from a slight recession in 1927-28, possibly cyclical in nature. It may also be accounted for by the conversion of many dual-purpose cows to milk production, or merely by a reclassification of the same animals as dairy animals. In general, the data on numbers of milk cows do not suggest the need for production control in ordinary times, so far as any major trends or cycles are concerned. If production per cow were combined with numbers, the need would be still less evident. Between 1925 and 1929, when cow numbers were scarcely holding their own, the increasing demand for dairy products was met by an increase of 11 per cent (from 12.9 to 14.3 pounds per day) in production per cow. Data presented in Chapter III show how production per cow decreased enough after 1930 to offset part of the increase in numbers.

The comparisons in the chart on page 404 of variations in output of manufactured dairy products since 1920 with those in output of wheat, cotton, and potatoes, indicate that excesses and deficits in dairy output from year to year constitute a relatively minor problem. The chart on page 405 shows that prices of dairy products have also been less variable than those of farm products in general and have not changed greatly if one adjusts them for changes in the prices of goods which farmers buy. In 1916-19, prices of dairy products rose less rapidly than those of other products, and they declined less in 1920-22. The

**DEVIATIONS FROM TREND IN ANNUAL OUTPUT OF
MANUFACTURED DAIRY PRODUCTS, COTTON,
WHEAT, AND POTATOES***

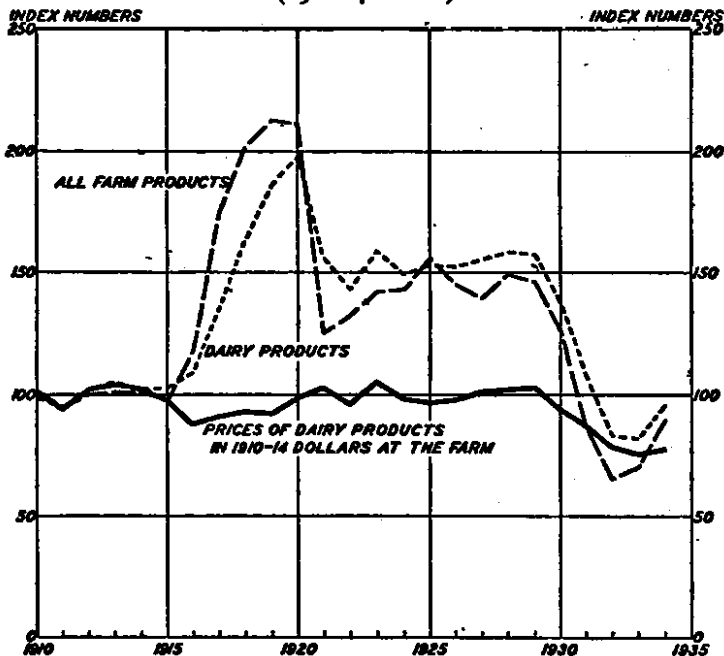


* The trends for wheat and potatoes are straight lines fitted by least squares to the data for the years 1910-32 and 1910-34 respectively. The trend for cotton was determined by fitting a second-degree parabola to the data for the years 1910-32, the trend having the form of a curve rather than a straight line. The trend of dairy products is a straight line fitted to the data for 1921-34, satisfactory data for earlier years not being available.

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1916-19 period, according to the accompanying chart, was one with large herds of cattle and low prices per head; but probably a more important reason for the low purchasing

RELATIVE MOVEMENTS OF PRICES OF DAIRY AND OTHER PRODUCTS,
1910-34^a
(1910-14 = 100)



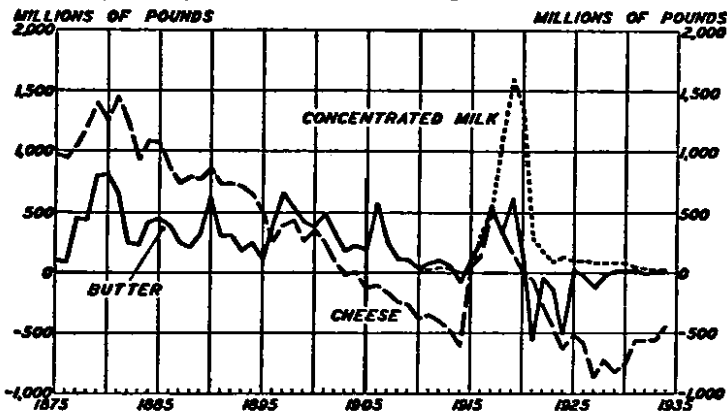
^a Based on data from the *Yearbook of Agriculture*, U. S. Department of Agriculture. The indexes for prices of dairy products in 1910-14 dollars at the farm (sometimes called "purchasing power") was computed by dividing the relations for prices of dairy products by the index numbers for prices paid by farmers, both being constructed on the 1910-14 base.

power of dairy products was the characteristic lag of live-stock and livestock product prices behind crop prices. The same lag appears in the downswing since 1929, and apparently will be manifest in the upswing in farm product prices now under way.

THE EXPORT-IMPORT BALANCE

Of possible significance in this connection is the import-export balance in dairy products. This is indicated for the United States in the accompanying chart, net exports above the zero line and net imports below. This country, as one would expect from the fundamental economics of the situation, has never been a large exporter of dairy products. In the peak years around 1880, as indicated by the chart on

NET UNITED STATES EXPORTS AND IMPORTS (IN MILK EQUIVALENT)
OF BUTTER, CHEESE, AND CONCENTRATED MILK, 1875-1934^a
(Net exports above zero; net imports below zero)



^a Based on data in issues of *Yearbook of Agriculture*, U. S. Department of Agriculture and *Monthly Summary of Foreign Commerce of the United States*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce. The milk equivalent of a pound of each product was: butter, 21 pounds; cheese, 10 pounds; concentrated milk, 2¼ pounds; cream, 7 pounds.

this page, the net outward movement represented the equivalent of only 2 billion pounds of milk. By 1907, the imports, mostly of foreign cheeses, exceeded our very small exports of butter and this continued until the war cut off domestic supplies in Europe in 1916. By 1920, European herds had been restored in part, and relatively high prices

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had stimulated rapid expansion of dairy production in Denmark, Canada, and other exporting nations, with the result that we at once returned to a net import basis, and have since remained there, although since 1931 our only perceptible dairy imports have been of foreign cheeses. Our only significant exports have been of concentrated milk, and these had sunk to almost nothing in 1933. Our tariff duties have been so high, especially since 1926, as to preclude any significant imports of butter, and the duties and quotas of European countries now preclude any movement of our butter in that direction. One cannot really say whether the country is on a surplus or deficit basis. A virtual embargo has existed so far as butter, American-type cheese, and milk and cream are concerned. For dairy products other than foreign-type cheese and concentrated milk, it can be said that until this last winter we have consumed exactly what we have produced since 1931, and also since 1925 except for some small imports of Canadian milk and cream that were finally shut off almost entirely by act of Congress in 1927.⁸

Butter output was 12 per cent less in the first quarter of this year than of last year. The apparent consumption of butter was 86 million pounds less in the same period. The difference was mostly made up by an increase in oleomargarine production of 46 million pounds in the same period, only 20 million pounds of butter being imported over the 14-cent tariff barrier.

It has been argued that we need production control to keep dairy production from getting upon an export basis. Obviously there is no prospect of any butter exports from

⁸ 44 Stat. L. 1101-03. An act to regulate the importation of milk and cream into the United States for the purpose of promoting the dairy industry of the United States and protecting the public health. This has curtailed the milk and cream shipments from the vicinity of Toronto and Quebec.

the United States as long as prices are so much lower abroad than here. We will consume our butter before we will let it decline in price to the level prevailing abroad.

NEED FOR PRODUCTION CONTROL IN 1933-34

A statement was made in Chapter XIII to the effect that the situation in the summer of 1934 was not favorable for a production control program of the allotment and contract type. That statement was not made upon the basis of supply and price conditions in the dairy industry. The highly abnormal conditions in business and agriculture from 1929 to 1933 had placed this industry as much in need of emergency treatment as they had the wheat, cotton, tobacco, and corn and hog industries. The data presented in Chapter III and those presented by the Adjustment Administration at its 15 conferences with producers leave little room for doubt on this score. Prices by the spring of 1933 were almost down to the level of those of other farm products, and the outlook was for recovery much more slowly because of the period which is ordinarily consumed in reducing dairy herds to normal proportions. The excess stocks of wheat, cotton, and tobacco, and the excess in number of hogs, gave promise in the spring of 1934 of restoration in a year or two to usual relationships to consumption. For the cattle industry in general, no such prospect was in sight unless vigorous control could be arranged. As stated earlier, only the interposition of the drought probably kept such measures from being undertaken before the end of the summer.

Nevertheless, it is fortunate for the Adjustment Administration and for the dairy industry itself that the control measures proposed were not undertaken at the time. One reason for this is that the Adjustment Administration was

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not ready to undertake a control program as difficult as this would have proved to be. It was taxed to the limit with the burdens of the programs already in hand. Its Dairy Section was still disorganized, with important officers in the AAA working at cross purposes with it. Even though a large majority of the dairy farmers would have signed contracts, they were not really ready in their thinking and attitudes, and in their understanding of the methods and procedures involved, for the task of executing such a difficult program as members of local producer committees, or of fitting into it as individual producers.

NEED FOR A CONTROL PROGRAM IN 1935

The drought and the purchase program relieved the situation last summer and saved the AAA from what might easily have proved to be an ill-fated venture in production control. The enforced culling and decimation of herds last summer, and short feed supply, accomplished about the same effect on output that the proposed production control program contemplated. Total factory production of dairy products in the first three months of this year was 12 per cent under that of a year ago. Prices of butterfat in April were 33.8 cents per pound as compared with 21.0 a year earlier. Parity prices in April were also exactly 33.8 cents per pound.

But are we to conclude that the industry is still relieved? Or is the need for production control about to arise again? The answer is not altogether clear and forecasts differ somewhat. The viewpoint of one group may be summarized thus:

1. In spite of the decline of 7.6 million head of cattle in 1934, the largest decline ever recorded in one year, total cattle still numbered 60,667,000 head on January 1, 1935, nearly 4 million more than at the low point in 1928, and that of this decline only 2,220,000 were

of milk stock. The number of dairy cows and heifers two years old and over declined only 1,085,000, and the number of these was still 2,971,000 greater than in 1928, whereas the number of beef cows and two-year-old heifers was within 624,000 of the 1928 figure. Yearling dairy heifers declined 502,000 and dairy heifer calves 634,000, and their numbers were about the same as in 1928. Three-fourths of the decrease in milk stock occurred in the North Central states, and most of this west of the Mississippi.⁴ The charts in Chapters II and III and earlier in this chapter show the relative importance of these changes. Hog numbers decreased 35 per cent in 1934, and sheep numbers 5 per cent, as compared with 11 per cent for all cattle, 6 per cent for milk stock, and 20 per cent for other than milk stock.

2. With cow numbers still large, a plentiful supply of feed, it is argued, will bring forth a deluge of milk. Production per cow is bound to increase anyway because of the culling of low-producing cows last year. Pastures were poor at the start of the season, but on June 1 were within three points of normal. Production per cow on June 1 was up 8.7 per cent from the same date in 1934. Only in some of the milksheds where much grain is fed is production not greater than last year in spite of the reduction in numbers of cows milked, and these areas will expand production when the new crop is harvested. Even as it is, their production is about equal to that of a year ago with the cattle almost wholly on grass. This leads to a final point in the feed argument; namely, that the experience of the past year has indicated that dairy herds living mostly on forage will produce an abundance of milk.

3. With high production in prospect and consumption unprecedentedly low and very sensitive to price increases, the outlook is for low dairy product prices—possibly under 20 cents for butter, according to some forecasts.

The arguments on the other side are mainly as follows:

1. The increase in cow numbers in 1929-34 was caused by a favorable feed ratio, which at present is very much reversed, and promises to be somewhat unfavorable for several years due to crop

⁴ As a result of these changes, the proportion of all cattle in the West North Central states declined from 32.3 to 29.7 per cent.

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control. (Prices of corn, bran, and cottonseed meal are all likely to be high.) Hence fewer calves will be raised again this year and herds will be reduced to normal in a few years.

2. Beef prices will be high in the next few years because supplies are well below normal, and this will induce culling, selling of calves for veal, and shifting of dual-purpose cattle to beef production. It is pointed out that the drop below the trend in milk cow numbers in 1926-28 accompanied such conditions. (See charts, pp. 398, 401.)

3. Restricting the corn crop will make pork prices high and increase the consumption of beef.

4. Pastures may be good just now because of abundant rainfall, but they have by no means recovered from the effects of several years of drought.

5. Consumption will increase if prices are not too high, and especially if employment increases less slowly than in the past two years.

6. The disease control program will remove a half million milk cows in 1934 at the present rate of operation.

The conclusion which this group reaches is that butter prices will not stay under 20 cents long if they get there, unless the 1935 crop of feed exceeds all expectations, and that by 1936 dairy herds will be well back toward normal, so that no major control undertaking will be called for in the near future at least.

The weather during the remainder of the year will be a major factor in determining which of these two forecasts is the better. Much also depends upon the argument as to the importance of grain in the dairy ration.

The same differences of opinion arise with respect to the longer outlook except that they hinge more largely upon the effect of the crop control program on dairy output. Without any such stimulus, a mere continuance of the strong upward trend in dairy cows from 1900 forward will add 2 or 3 million more dairy cattle by 1940. Production per cow will increase at the same time. During

the twenties, consumption increased fast enough to take care of the increased output. Prospects that this will continue are not encouraging at present. Butter prices are extremely low in other lands. The dairy industry may indeed be in the midst of a period of over-production such as has characterized wheat, cotton, sugar, and other products in the last five or ten years.

The argument as to the effect of the crop control program has been stated as follows by Mr. Holman in his annual report to the National Co-Operative Milk Producers' Federation:

Also the present policy of the AAA with respect to production control of wheat, cotton, and corn is to pay benefit payments to these producers and to permit the land taken out of these crops to be used next year for the planting of the crops that will produce milk. This, together with the presence in the country of a maximum number of milk cows,⁵ with favorable weather conditions will undoubtedly produce a large surplus in 1935, and a much greater surplus in 1936. Consequently the Federation is urging that dairy products be given opportunity under trade agreements to get into the export trade.

CONTROL MEASURES

So far as one can conclude from such evidence as the foregoing, the AAA is likely to be confronted with the need for control measures in the next year or two if it is to do for the dairy industry what it has undertaken for other industries. Minor measures such as relief purchases of butter and disease control may suffice, but there is a good chance that they will not. In the longer view, it seems highly probable that if crop control is continued, it will force measures to control dairy output because it will increase the supply of dairy feeds. Let us briefly review the

⁵ This statement was made before the official figures for January 1935 were available.

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various measures available or proposed. Three proposals were embodied in the program offered to the industry in 1934: eradication of disease; transfer of cows from surplus areas to farms without milk cows; and the distribution of relief milk to undernourished children.

Concerning tuberculosis eradication, the AAA commented as follows in 1934:

Any plan for tubercular cow removal financed in substantial part through a processing tax would be opposed by dairymen in those states where property tax money has already been used to secure modified accredited standing. They would object to the apparent unfairness of using large amounts of revenue from a nation-wide tax to further eradication in the few areas where numbers of reactors are concentrated.⁶

From 200,000 to 250,000 cows have been eliminated annually through tuberculosis testing under state control in recent years. Extending this testing to the remaining areas would probably increase the number by 50,000. The federal expense involved would be small except for the circumstance that the administration costs are much more than the payment for the condemned cattle.

The Bang's disease program could easily be extended into later years. The important questions concerning it relate to its reliability and its effectiveness. In ordinary times, the counsel of wisdom would be to try it out on a smaller scale under carefully controlled conditions before making it a national program. However, if herds need to be reduced for other reasons, this may well serve as a basis for the selection. If it proves effective, the expense of it can properly be charged in considerable measure to the general public by paying it out of federal appropriations.

⁶ *Alternative Proposals and Their Advantages and Disadvantages* (No. 496760-34), AAA, March 1934.

The loss in average annual output per cow from this disease is much greater than the cost of removing a half million cows per year, and of this loss the consumer pays a full share in higher prices. But if removing this number per year does not significantly reduce the amount of contagious abortion, and does reduce the output, the consumers will pay for it twice, in federal taxes and in higher prices from restricted milk supply, and get small return in lower costs later. If the expense is paid out of processing taxes, the only difference will be that the producers will share more largely in the expense.

As an illustration of the type of question involved, effective control may require repeated testing of all herds in any area, and prohibiting all in-shipments of cattle except from other tested areas. (The present program attempts to put such regulation on the individual herd basis; but no adequate enforcement is available.) If this proves to be true, such expenditures as the present would be largely wasted unless followed immediately by effective types of control, except as they might serve to reduce herd numbers and restore the industry to its usual relations to its market, from which the public might benefit in the end for other reasons. Because of these and other uncertainties, large numbers of producers may object to having their herds tested. A safer procedure would be to make the program joint with the states and put it upon an area basis. This would more nearly insure its acceptance and continuation. The program seems to be developing rapidly in this direction. If no setbacks occur it may take this form in a few years in many states, in which case the work so far can then be interpreted as preliminary education.

The proposal to transfer cows to cowless farms, in the form originally outlined, is thoroughly commendable but

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difficult to administer in such a way as to attain the ends desired. It will reduce the commercial output of dairy products and increase consumption where such increase is most needed. The Adjustment Administration can probably afford to give such an undertaking the attention needed to make it succeed. It needs to be co-ordinated carefully with the rural rehabilitation program.

Purchases of butter and cheese for relief use with funds authorized by the Jones-Connally Act as a means of strengthening the price are already under way, and have already begun to produce their effects. Such purchases should not be planned with the intent of holding prices at desired levels, but rather of keeping storage holdings at normal levels. Surplus relief purchasing carried to the point of raising the price of the commodity to parity is an absurdity unless the producers of the product are more in need than the unemployed classes. Neither should such a device be relied upon year after year, as is always a real danger. Furnishing milk to undernourished children, or even to schools, either free or at greatly reduced prices, can be justified indefinitely, both as education in the use of milk and as social welfare activity.

The most frequently proposed other method of reducing dairy output quickly is to stimulate culling of milk cows. The AAA's statement in 1934 on culling was as follows:

Any cow-removal program involving payments by the government must result in some actual reduction of milk production beyond what normal culling provides. Otherwise the government would be paying farmers for doing what they would do anyway. Allowing for the normal annual rate of culling, 4.5 million head, and for possible shifts from beef to dairying, and including the assumed extra culling to offset death loss, the Administration finds that a 3 per cent cut in commercial milk production would require the elimination of 5.5 million cows; and a 5 per cent cut would

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require 6 million fewer cows; and a 10 per cent reduction program would require the removal of $7 \frac{1}{3}$ million cows in one year. The total tax required to provide the necessary payment to cow owners for culling would be large, and the distribution of the benefits under such a plan would not be equitable as among regions, localities, or individuals. . . .⁷

Clearly, a culling program of this description would be difficult to administer unless applied to all cattle. Applied to dairy cattle, it would reduce milk output at once and increase the current meat supply; applied to beef cattle, it would also increase the meat supply for the present, and reduce it only after a few years. Processing taxes could be collected on dairy products at once, and also on beef sales except for the fact that prices are now above the parity level.⁸ In spite of these difficulties, conceivably a workable culling program could be devised, based on the assumption that a small bonus paid on all mature females would increase the rate of culling and restore breeding herds to their usual proportions. It would be important to begin the payment of the bonuses as soon as herd numbers rose above the trend line. Whether the dairy and beef industries would gain by such a procedure over a period of years is another question, and uncertain of answer.

Two variants from the foregoing need to be considered. One is paying bonuses only on culling in excess of county quotas representing the normal amount of culling. This would increase greatly the effect that could be achieved with the same bonus expenditure. The quotas assigned could be considerably under normal and still have this

⁷ The same.

⁸ In the usual situation, the taxes would reduce beef prices already low for a period of two or three years before the price-raising effect of reduced supplies would be felt.

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effect, so that a high degree of statistical accuracy in the quotas would not be necessary. The principal difficulty would be that of the distribution of the bonus payment among individual farmers. Perhaps this could be arranged by establishing a fixed ratio of sales to breeding stock that could be applied to each herd.

The other variant is paying the bonus only in certain sections where herd increases have exceeded sectional quotas or where further expansion is undesirable. The bonuses in this case could be made large enough so that the producers would be fully repaid for the sacrifice of opportunities involved.

To those who adhere to the dairy-cycle theory, or merely anticipate that from time to time the dairy industry will tend to overexpand, the principal need seems to be to check the increase in heifer calves saved for rearing to milking age, at the point where this increase begins to exceed the trend; and they ask why this cannot be done by the simple device of paying a small bonus on heifer calves slaughtered at this time and as long as necessary, raising the money from a small processing tax on all dairy products. This form of control seems simpler than paying a bonus to stimulate increased culling, and should contribute equally to more efficient production. It has the same difficulty of distinguishing dairy from beef calves. Probably beef and dairy calf purchasing would need to be combined in the same undertaking. A plan would then need to be devised that would insure getting the bonus back to producers on around 15 million calves a year. To have a significant effect, the bonus would need to be large enough to offset the producer's anticipated net return from the mature animal. Hence a rather large processing tax would be required; but it would normally come at a time when

prices were high. Perhaps the expenditure could be reduced by using one of the quota plans just outlined to apply to culling. Finally, such a device could be employed only for a year or two at a time, since producers would presently begin to postpone culling and rear more calves in order to secure the bonus.

The approach to the problem that has received the most attention has been in terms of restricting the supply of feed grains at this and other critical periods. As conceived thus far, this plan would require the collection of processing taxes on all the major forms of livestock using feed grains, and using the income therefrom to make rental payments on land contracted out of such grains. This is not possible under the act in its present form. A proposal to amend the Adjustment Act along these lines in this session of Congress was supported by Corn Belt and Southern farmers, but opposed by the Western cattlemen and by a strong element in the dairy industry. Important groups in the dairy industry have concluded that any reasonable restriction of acreage of corn, oats, barley, and other feed grains would not reduce the number of hay-consuming animals, and probably would stimulate an increase, the effects to be clearly apparent by 1937 and to continue as long as the grain crop control lasts. They recognize that the dairy production of Wisconsin, Minnesota, Michigan, and the whole northern fringe of the Corn Belt is largely based on corn as a source of feed; but believe that if the corn acreage were restricted severely, clover, soy beans, alfalfa, and pasture could be substituted with only a small loss in total nutrients. Such a shift, they admit, might be desirable from the standpoint of soil conservation; but it would not serve as a very effective means of controlling dairy output.

Other analysts have not come to exactly this same conclusion. A careful analysis made at the Iowa Agricultural Experiment Station indicated that the total feed nutrients would be reduced 5 per cent by substituting soil conserving forage crops for a fifth of Iowa's corn acreage. With hog numbers restricted, however, this might result in more feed going into dairy products. But if beef cattle were substituted for hogs in considerable measure, the total output in human food would be much reduced since much more feed is required to produce food in the form of beef than in the form of pork or dairy products. The chart on page 398 showing changes in cattle numbers, suggests that beef production has been declining since the World War if not longer. Considerations of national economy, including diets and conservation of soil resources, point to the need for an expanding rather than a declining beef cattle industry.⁹ Mr. H. R. Tolley's conception of decreasing agricultural output through shifting to a more extensive and more soil conserving pattern of agricultural production is surely sound, and should be possible to apply. Steps leading to the solution of this problem are now being taken. The Division of Program Planning is now collaborating with each of the state experiment stations in collecting the necessary information for an analysis of the shifts in production needed in each type of farming to convert its agriculture to the desired basis. The next step will be working out this analysis in collaboration with the states.

Before such an objective can be realized fully, the present basis for making benefit payments will need to be changed somewhat. Probably the payments will need to be made per acre of the land contracted out of given crops accord-

⁹ See p. 423.

ing to the use to which these acres are put. When this stage is reached, the production adjustment program will have merged into a land-use program and will be upon a basis that can be continued indefinitely because founded upon unquestionable considerations of sound national policy.

In the meantime, a little progress in the desired direction could be made if the government purchased extensive tracts of overstocked cattle ranges and held them out of use. But keeping range lands from being grazed is a difficult undertaking in control. Could it be achieved, it would cause beef cattle production to replace dairy production somewhat in the Corn Belt. In other areas, public forests and woodlots can be substituted for crop land now suffering from erosion. Worn-out pastures in the hill regions can be allowed to recuperate for a while. Sowing eroded crops lands to sweet clover and letting it reseed itself over a period of years has been proposed for other areas. One must not forget, however, that farmers moved out of sub-marginal areas will surely keep as many cows as at present unless they are rehabilitated in urban occupations.

We must conclude from the foregoing that no simple, easy procedure for checking the next increase in dairy cattle numbers, or further reducing numbers in the next year or two if this appears to be needed, has thus far been proposed. Probably a combination of several procedures will be used when the time comes. This was essentially the conclusion of the AAA in 1934. It could have concentrated on one method, but decided to pay the bonus on the product and let each dairy farmer accomplish his reduction by whichever way suited his situation best. This was surely a rational decision. The principal changes affecting

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the problem that have occurred since are that Congress has now authorized the use of income from processing taxes to reduce excess production in other ways than through contracts to reduce production, and the Dairy Section and the AAA generally are in better condition to handle undertakings of this nature. Dairy farmers also have acquired a better understanding of production adjustment, and farmers in general have a more favorable opinion of it.

ALTERNATIVES TO PRODUCTION CONTROL

Recognizing the difficulties of controlling dairy production, and even questioning its wisdom from a broad social viewpoint, the leaders in the industry and in the AAA have ever and again turned to the possibilities of disposing of the excess product. Recently some spokesmen for the industry have been taking a great interest in devices for facilitating the exportation of farm products, and have urged their inclusion in pending amendments to the Adjustment Act. Such devices have the power of making export possible while still holding domestic prices above an export level, but only providing the countries receiving the exported product do not interpret them as export subsidies or export dumping. No argument is needed that the time is especially unfavorable for such ventures. Dairy products present unusual difficulties because the supplies are so large at present and world prices so low. The State Department would have great obstacles to overcome in any commercial treaties providing for butter exportation.

As to the proposal to check the use of competing products, the AAA commented as follows in 1934:

Many dairymen raise the issue of competing products and desire to have strict embargoes or prohibitory measures invoked against oleomargarine and its ingredients as a means of increasing the price

of butter. If all oleomargarine were eliminated and all consumers then used butter instead, it is believed that the maximum increase in the price of butter would not be over 2 cents per pound on the basis of 1932 conditions. At present, however, it looks more probable that the increase in butter price, if oleomargarine were eliminated, would be something less than one cent. If the importation of fats and oils for use in oleomargarine were prohibited, it is probable that domestic fats and oils would be used, and the effect on butter prices would be negligible. In arguments advanced for preserving the American market for American fats and oils, with embargoes or high tariffs against imports, the dairy industry is joined by the meat packers, the domestic oleomargarine manufacturers, and the beef and cotton producers. The packers, oleomargarine, and beef and cotton people presumably support the plan because it would provide them with a better opportunity to preserve the home market for homemade oleomargarine.¹⁰

The last Congress passed the tariffs on foreign fats and oils that the Federation group wanted. As expected, it has not changed the situation appreciably. Shutting out the foreign supplies tends to raise by a very little the price of domestic fats and oils, and puts the makers of butter substitutes at a slight disadvantage; but under ordinary circumstances the domestic supply will be adequate for all needs. Meanwhile, as pointed out elsewhere, the consumption of butter substitutes increased tremendously with the rise of butter prices in the past winter. The dairy industry would no doubt like to see the domestic consumption of butter substitutes entirely prevented. Probably, however, the present restrictions represent about the limit of what can be obtained. Countries in which the consumer point of view is more dominant than in ours have found less restrictive methods than ours of preventing the fraudulent sale of oleomargarine as butter.

The Department of Agriculture has given much thought

¹⁰ *Alternative Proposals* (No. 496760-34), AAA.

to increasing the consumption of dairy products. The Division of Program Planning has considered this as a possible way of utilizing the product of the supposed excess of 40-odd million acres of land now in crops. As one phase of its analysis, it estimated, for illustration, the land requirements of each of "four scientifically balanced diets at different levels of nutritive content and cost" that the Division of Home Economics had devised. We quote from Mr. H. R. Tolley's analysis of these particular diets as follows:

. . . The first diet is a restricted diet for emergency use. This diet provides about 2,675 calories per capita per day, and is made up largely of the cheaper foods such as wheat flour, corn meal, and other cereals, dried beans and peas, with reduced quantities of fresh fruits and vegetables, milk, and other dairy products. As suggested by the name, the quantities of food allowed are close to the minimum and are not recommended for use over extended periods.

The next two diets are the adequate diet at minimum cost and the adequate diet at moderate cost. These two diets provide about 3,000 calories per day and have a vitamin content of 50 to 100 per cent greater than the restricted diet. They also provide for a much smaller consumption of cereal products and a corresponding increase in the consumption of dairy products, vegetables, and lean meat. As indicated by the name, the adequate diet at moderate cost is further removed from the restricted diet than the adequate diet at a minimum cost. It provides for a more liberal consumption of milk, meat, and certain of the vegetables and fruits. The fourth diet, which is termed a liberal diet, provides about the same number of calories as the other diets. It, however, provides for an even smaller use of cereal products and an increased, very liberal use of lean meat, eggs, milk, tomatoes, vegetables, and fruits.¹¹

These four diets would require respectively, 160, 221, 276, and 329 million acres of crop land, and amounts of pasture and range land varying roughly in proportion to the crop land. The average diet in 1932-33 was approxi-

¹¹ Address, Farmers Week, Ohio State University, Jan. 31, 1934.

mately the third of the series, an adequate diet at moderate cost. Thus a relatively moderate substitution of dairy products for cereals within the diet upon which we are now living would provide an outlet for the product of many million more dairy cows.

These particular diets were worked up from a consumption standpoint largely, and were not related to the economics of production in the United States. For example, they are not properly related to the advantage which this country enjoys in the production of pork. Nevertheless, diets can be devised which would represent better consumption and also be adapted to our agriculture.

Such analysis, however, must not blind us to the fact that a shift to more dairy products would increase the cost of the diet unless lower cost methods of production and distribution of these products are developed. The dairy interests want the consumption of milk increased at "good" prices—like those prevailing in 1925-29. They are inclined to believe that this can be brought about by advertising and by talking about the food value of dairy products. Experience indicates that these methods produce their effects gradually, and that in the meantime consumption is considerably affected by prices and income. The increase in consumption from 1921 to 1930 was probably more due to the high real wages of city workingmen after 1920 than to publicity efforts. A positive sustained program for increasing consumption of dairy products will consist fundamentally of the following:

(a) Getting more farm families, especially in the South and West, to keep one or two cows and produce their own supply. This is the most important of all measures; but it will not provide additional outlet for the production of the specialized dairy areas.

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(b) Increasing employment and income for the wage-earning classes.

(c) Securing efficiency in production, with resultant lower prices to producers and consumers.

(d) Securing efficiency in distribution, with lower dealer gross margins and lower resale prices.

(e) Getting more dairy products to consumers in cheaper forms; for example, as evaporated milk and dried milk.

(f) Improving the quality of the product.

A program of honest education of consumers in the use of dairy products will add appreciably to the effect of the foregoing, but will not be largely effective as a substitute for them. Large changes in the food consumption of the American people have taken place since 1920; but advertising had little to do with most of them, and consumer education much less than is commonly supposed. The food habits of 125 million people are only slowly changed by taking thought of what is good for them and telling them about it. The changes mostly come as a result of making certain foods more available to them at lower prices; of social changes, such as in housing and transportation; and of better incomes. This is well illustrated by the changes in relative consumption of different fruits and vegetables since 1920.¹² There is little correlation between these changes and the amount of advertising done. The increases are mostly in fresh vegetables and fruits consumed in the fall and winter months, and are explained mostly by larger incomes and developments in transportation. Nevertheless, such educational efforts are very much worth making. The AAA has been correct in its statement that it cannot

¹² The percentage changes in the commercial production (not under glass) of various vegetables and fruits reported in the 1930 census as compared with the 1920 census were as follows:

support a program to increase consumption of one food product at the expense of others. But it could justify a program designed to provide a larger domestic outlet for the several products of lands put under cover to prevent erosion.

CONTROL OF MILK PRODUCTION ALONE

If butter and cheese prices sink badly again in the next year or two, and no effective general dairy control program is developed, fluid milk markets will again come under pressure from outside sources of supply.¹⁸ Present control methods will not suffice except in markets where the producer association has virtually all the distributors under contract and is able to deny the market to new shippers and hold down the bases of its members. The AAA at that time will need to choose between a policy of promoting fair competition in milk markets, with fluid milk prices near to a basis competitive with butter and cheese prices, or setting up temporary barriers around milksheds. The legal status of the latter procedure probably needs to be determined separately from that of efforts to control mar-

Vegetables	Acreages	Small Fruits	Acreages
Spinach	+ 479	Strawberries	+ 103
Lettuce	+ 433	Raspberries	+ 13
Asparagus	+ 228	Blackberries	— 5
Cauliflower	+ 197	Currants	— 68
Green peas	+ 164		Trees of Bear-
Sweet corn	+ 78		ing Age
Radishes	+ 64	Orchard Fruits	
Cabbage	+ 44	Avocados	+ 561
Tomatoes	+ 37	Grapefruit	+ 163
Parsnips	— 7	Oranges	+ 69
All vegetables	+ 97	Apricots	+ 58
		Lemons	— 3
		Peaches	— 10
Grape-vines (number).....	+ 52	Apples	— 23

¹⁸ This has already happened in several markets.

keting. Such features as base ratings and equalization of returns may be accepted as necessary to the control of marketing practices and prices as defined in the Adjustment Act; but whether the courts will define limiting the ratings of individual farmers so as to keep down the supply and hold prices up as marketing control or production control has yet to be determined. If the latter, then they may also rule with Judge Barnes that production is an intrastate matter. The same issue will arise with respect to denial of bases to new shippers outside of the present milkshed.

If, however, the problem is approached from the standpoint of production control for a basic commodity through contracts voluntarily entered into, fluid milk and cream being considered as separate commodities, as is possible under the act, the legal problem becomes that of the Adjustment program in general. If base ratings are adjusted as indicated earlier, diminishing with distance from the market, no difficulty would arise in giving new shippers quotas if they wanted them so long as the price of milk was in line with prices of competing dairy products. If, however, the sale of Class I milk is restricted to the present shippers of fluid milk and cream, which would parallel in some respects the procedure with the other basic commodities, the quotas would probably need to cover total production of all classes of milk, but they could be subdivided among classes as desired. Probably they should permit the producer to meet his quota by periods of several months, not by individual weeks or even months. This would increase his latitude in making adjustments.

Such a program for control of fluid milk production could be announced as a national scheme, available to any fluid milk market voting for it by a two-thirds majority, the alternative being to accept prices for fluid milk that are

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competitive with butter, cheese, and evaporated milk prices. This would be wholly consistent with the conclusion reached last year in the AAA that the "legalistic" approach to milk market control—that is, enforcement of monopoly prices by means of *fiat* and the licensing power—is non-workable in practice.

If the supply of fluid milk moving to any market were under control, prices could be left to be determined by the markets as are wheat and cotton prices at present. If some control of prices still seemed necessary in markets as institutionalized as most milk markets, possibly the courts would accept a supervised open-price system, and this might suffice in many markets.

The final question is whether benefit payments would be necessary to secure the high percentage of contracts needed to make such a plan work; and, if so, whether some method of collecting the necessary funds could be devised. This latter question is discussed in Chapter XV.

CHAPTER XV

SUMMARY, APPRAISAL, AND OUTLOOK

To close a study of the dairy program of the AAA without giving the reader some estimate of its accomplishments would sorely disappoint him. Yet there is nothing much that can be definitely set down. In terms of price raising, the marketing agreements and licenses have increased somewhat the prices of milk and cream in most of the markets covered by them. One cannot say by how much for two reasons: first, in some markets prices might presumably have risen as much, or possibly even more, without the license, under other arrangements that were about due to be developed; second, the official published prices are merely nominal—one does not know whether they were paid more generally before the license or after it, although the latter is usually assumed. If one were to take seriously the data given in the table in Chapter XI,¹ he would conclude that milk prices in the period from May 1933 to September 1934 were raised 36 cents more per hundredweight in 23 markets under federal licenses than in 16 markets not under any license. From September 1934 until recently, butter and cheese prices were high enough to sustain the current milk price schedules in many federal markets. Now again they are well under fluid milk prices in many markets.

The evaporated milk agreement surely raised prices to patrons of the evaporators from May 1933 onward for a year. Whether prices to producers have been any higher since last fall because of the agreement is open to some

¹ See p. 344.

question. The relief purchases of butter and cheese probably added not more than a cent per pound to the price at the most; but a fraction of a cent on 2 billion pounds makes a tidy sum. The cattle purchase program had some elements of a bonus in it, but its most important effect should be a somewhat smaller milk output than otherwise during the current season, and slightly higher receipts from sales in consequence.²

More important than any financial returns, however, are certain contributions to improved well-being, attitudes, and morale. Even the small price increases no doubt have been of distinct help to many individual farmers struggling desperately to provide for their families and to hold their farms. The cattle purchase program has been especially helpful in this respect. Averages do not serve in the weighing of such values.

Also more important than the financial returns from such undertakings as those of the AAA should be the progress made in solving problems which may yield a return upon the original investment for many years. The dairy products program does not make a good showing on this score. The cattle purchase program did assist in reducing the number of milk cows, heifers, and calves by 2,220,000 head in 1934, and thus in restoring dairy herds part way back to normal. The purchase of diseased cattle is to continue, and will contribute further to the same end. If the Bang's disease undertaking aids significantly in stamping out the disease it will be an important feature of future efforts at production adjustment, with important effects on costs and consumption as accompaniments. Outside of these two purchase undertakings the dairy products program shows little of tangible result in actual production

² See p. 395.

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control—nothing to compare, for example, with the controls achieved for wheat, cotton, tobacco, and corn and hogs.

Surely no better showing can be claimed for marketing control. Scarcely one important interstate market is today operating satisfactorily under its license. Most of the important problems are still to be solved in whole or in part.

Nevertheless, in most of the markets still under license, methods that have come to be recognized as useful have been introduced for handling one problem or another; and of most of these same markets it can be said that they have been more orderly since the license was introduced than before, and that competition in them has been conducted upon a somewhat higher plane. In a few of the markets, the organization has been improved a little. It is true that there have been offsetting losses in some of them—in the form of reprehensible devices for evading the terms of the licenses, or undesirable extra-legal arrangements employed by the dominant groups for checking such evasions; but the gains in most markets outweigh the losses.

The returns from the dairy product control program must be measured more largely in terms of progress toward understanding than of actual solutions. As a result of the strivings and searchings of mind of thousands of workers in hundreds of milk markets in the country, there has gradually evolved a somewhat clearer comprehension of the essentials of the problems to be met. Hundreds of thousands of fluid milk producers have come to have a little broader conception of objectives and methods and are thinking a trifle less in terms of their own immediate interests. The production control proposal and its presentation to the country stimulated a million or two dairy farmers to do some new thinking about their industry.

In estimating such gains, one must always reckon on a tendency to exaggeration by those not in constant touch with the rank and file. Perhaps as important as all these, a new and capable group of workers in the Department of Agriculture has been set at work on the problems of the dairy industry, and has already attained an understanding of them that will serve as an excellent foundation for any steps to be taken from this time forward. Finally, it should not be amiss to state that among those who in the past have considered themselves leaders of thought and action in this field there are several at least who have come to realize that some of the conceptions with which they started in the spring of 1933 are not as appropriate as they then thought.

Of specific lines in which progress in understanding has been achieved, the following are notable:

1. The interrelationships of supply and price, and the difficulty of maintaining prices at any given level without respect to supply.

2. The nature of the problem of control of dairy products.

3. The interworkings of prices of fluid milk, cream, and manufactured dairy products, and the consequence of efforts to disturb them.

4. The objectives, significance, and effects of various price plans, including prices according to use, pooling, base ratings, and equalization.

5. The role of public authority in control of prices and marketing; the limitations of public authority in these fields.

The significance of the foregoing achievements can be properly judged only against a background of what could have been achieved—of the lines that might

advantageously have been followed and the progress that might have been made along them. No clear-cut pronouncement as to these is possible because the dairy product program has to be considered as part of a general program for all agriculture, and for that matter, for the whole national economy; and these general programs have not been at all clearly defined. Space will permit considering in review only a few of the possible alternatives in these background programs. We may assume on the one hand that the dairy program was to be fitted into a mostly unplanned economy such as prevailed in the pre-1933 years; or on the other that it was to be fitted into the somewhat more planned economy that has been rather vaguely conceived since 1933. We may also consider the dairy product program as either a purely emergency undertaking or as initiating a continuing program of improvement of one sort or another. The reader must perhaps be cautioned that this book takes no position for or against a planned national or agricultural economy, or for either an emergency or a continuing policy in administering the AAA program. Issues of this sort are reserved for discussion in a later volume treating the AAA program as a whole.

A reasonable inference from the discussion in the last chapter is that in a mostly unplanned economy such as that of the pre-1933 years the problems of the dairy industry can be met without resort to positive production control devices such as are represented by the present Adjustment Act. To be sure, prices of dairy cows, and to some extent prices of dairy products, will be affected by the wide swings in numbers of "other cattle"; but a vigorous outlook and adjustment program such as was developing in the 1923-29 period should presently deal with these in a reasonably effective way. More positive measures

might produce more prompt adjustments; but the additional expense involved probably would not be warranted, to say nothing of the loss in freedom of initiative.

The discussion also strongly suggests that most of the production problems of the beef and the dairy industries need to be handled in close relation to each other. In practice, they also need to be handled by similar methods. The writer has made no exhaustive analysis of conditions in the beef cattle industry, but such evidence as is readily available suggests that under the foregoing assumptions an outlook and adjustment program would be best adapted to it also.³

Account needs also to be taken of the conditions in the dairy industry and the related beef cattle industry arising from severe business depressions like the present. The favorable ratios of dairy product prices to feed prices at such times, commonly combined with relatively low prices for meat, are likely to cause an expansion of numbers of cows and of production which will cause recovery in the dairy industry to lag somewhat behind that of the rest of agriculture.⁴ Nevertheless, only on the assumption that the best method of dealing with depressions is to hold all prices firm can a program of restricting dairy output at such times be justified. If the nation's policy is the opposite one of keeping prices flexible, surely dairy production must fit into this pattern. If in the next depression, as in the present one, the nation follows a confusion of these two policies, the answer is not so easy; but surely flexibility for dairy products is to be preferred unless they are too much

³ See D. A. FitzGerald, *Livestock under the AAA*.

⁴ In any given case, there might be a short-time swing in the other direction initiated by other causes that would offset this effect. This would be particularly possible with beef cattle.

involved with other products. Moreover, if production restriction is adopted for other farm products at such times, the dairy industry may find it necessary to fall in line merely as a matter of protection.

Whether prices and production of farm products in general should be kept flexible or restricted in depressions involves analyses outside the scope of the present volume. The answer depends in large part upon how much of the price structure has already become more or less rigid, and what seems to be the best solution of the problem in general.

In the same mostly unplanned economy as of the pre-1933 years, the marketing of dairy products is also best left to adjust itself to such fluctuations in supply and prices as accompany the aforesaid changes in production and in business conditions, except for the assistance that can be rendered by more complete market information, better market grades, and better marketing organization and regulation of trade practices. Attempts to hold prices at desired levels by fixing and similar devices are likely to prove unfruitful. Even if the nation is consciously pursuing a policy of holding prices rigid, the best procedure is to restrict production and shipments and let the market make the prices.

If we now shift our basis to a more or less planned agricultural economy such as was underwritten temporarily at least in the Adjustment Act, most of the foregoing conclusions are changed. Control of production of wheat, cotton, tobacco, and corn and hogs is likely to induce unwanted swings to and from dairy production, and hence to make some form of control of it presently necessary. This can be approached through direct control of output,

or control of cattle numbers, or control of land use. The last would seem to be the best by all means; and the second might serve as a preliminary step.

Planned agricultural production of the sort just described need not carry planned marketing with it. Probably it should for some commodities and not for others. For the present, some form of regulation of the markets will prove wiser for most staple products. In any case, the planning should take the form of developing marketing organization, laying out the channels of distribution, and regulating the flow to market, instead of the form of direct price fixing, except possibly in the case of commodities coming within the bounds of the definition of a public utility.

Thus far in the chapter the summary has been in terms of a continuing program. The Adjustment Act was ostensibly a provision for the existing emergency. Clearly the emergency could not be relieved as quickly as desired by Congress by using only the methods outlined above for a mostly unplanned economy. Those actually employed were more vigorous than would characterize even a well-conceived planned economy. Cotton was plowed under, pigs were slaughtered, and prices of several farm products were fixed. In the case of milk, a scheme was devised for imposing uniform buying and selling prices on all dealers. Many steps taken no doubt went beyond what was contemplated when the act was written. These bold measures may have been necessary in view of the state of agricultural discontent. If we assume a more or less planned agricultural economy, they should not all be necessary indefinitely, and some of them are already not in prospect of being repeated. But which should be continued and which not is by no means determined. Congress has not even said that it proposes to provide for continued agricultural

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planning. Some of its reactions seem to say "yes" and others "no." The passage and renewal of the Bankhead and Kerr Acts, and other provisions relating to marketing agreements in the recent amendments, clearly indicate that at present Congress stands ready to authorize measures somewhat in excess of what was provided in the original act.

Some of the foregoing questions need to be examined from the standpoint of fluid milk considered as a separate category from dairy products in general. A condition had arisen in fluid milk markets even in the mostly unplanned economy of the pre-1933 years which called for more assistance from public agencies than was then available; but this need not have taken the form of public price fixing or public underwriting of collectively bargained prices. Probably a well oriented program of market information and analysis would have sufficed at that stage.

In a more nearly planned economy such as was provided for in the Adjustment Act, with the dairy industry as a whole included in the scheme of operations, some form of special provision by individual markets and milksheds which takes account of how each is individually related to the whole is surely indicated. But that a system of uniform prices publicly enforced is the best approach is to be doubted. Instead, an agency could be created in each market for establishing a set of arrangements and rules of operation designed to secure fair competition. These arrangements would need to take account of the relationships outlined in Chapters VI and VII and to provide either for class prices according to use or flat prices definitely based upon records of use by classes; also for a plan of base ratings or its equivalent such as would pay each producer in proportion to the seasonally weighted

average value of his output, and for a form of equalization of returns between dealers that would prevent any one dealer from pocketing indefinitely the whole gain from selling a larger than average proportion of base-rating milk for fluid use. But the arrangements should not be such as to prevent any dealer from passing on to his customers and to his producers the gains from an increased efficiency in his methods; nor as to estop individual producers or organized groups of producers from using any advantage they rightfully possess to expand the volume of their production and sales. Any dealer or producer distributor should be free to lower his selling prices so long as he does not indulge in local or temporary price cutting, secret rebates, and other procedures condemned as unfair competition in the act establishing the Federal Trade Commission. The same statement would apply to organized groups of producers. Prices based upon use of milk, base ratings, and equalization all seem to the writer to be arrangements likely to prove necessary to secure really fair competition and equitable returns to producers in milk markets; and hence to be enforceable under public regulation.

In the special emergency in milk markets that had developed in 1933, the efforts made to establish uniform prices on a higher level, even though nothing was being done about butter and cheese prices, may have been well conceived; but much has happened to cast doubt upon their wisdom. At this distance from the event it would appear that the strictly emergency efforts would have been more helpful if they could have been limited to voluntary agreements developed with the assistance of the government, with no public attempt to force the agreement upon those unwilling to participate. Certain rules of fair competition, however, designed to prevent the sale of unsafe milk, or

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misrepresentation of the quality, unfair price cutting, and the like, would have been needed as supplementary supporting regulations. The attempt at the outset to impose base ratings or equalization of sales upon all producers and dealers was premature in all but a very few markets. This should have been undertaken as a later development, like some of the later developments in the production adjustment program.

As explained later, such a program might have been rejected utterly by producer associations and dealers in all markets. At the most that could have been expected, many markets would have found useful marketing agreements impossible to arrange on such a basis. In that case, it would have been better policy for them to have done without them just as many other commodity groups have done. Some agreements would have been arranged but dropped because they were ineffective. Their success would have depended largely upon local conditions in each market. Any market already well organized with important interests already experienced in working together would have been able to use such a marketing agreement effectively. In such markets, plans for the general application of base ratings and equalization of returns, each carefully adapted to the special conditions in the particular market, could have been worked out gradually. If this course could have been followed, several markets might now be using such plans to the satisfaction of nearly everybody concerned, the non-members and smaller co-operatives as well as the large co-operative.

An interesting corollary of the foregoing is that if such a course of action had been followed, many of the adverse court decisions of the past two years would not have oc-

curred. The writer believes that even base-rating and equalization plans might have been approved by the courts if devised along the lines indicated.

With such voluntary agreements developed as here outlined, the producer associations and dealers could have continued their former arrangements as to collective bargaining. That the federal authority should have been invoked to impose these prices upon other dealers and producers now seems doubtful. Clearly the AAA should not have undertaken to enforce the resale prices. Perhaps it should have undertaken nothing further as to buying prices than to give whatever support to the collectively bargained prices would have arisen from enforcing fair dealing; or perhaps it should have undertaken enforcement of some plan for buying milk according to schedules publicly filed and posted. The chances are better that the courts will accept enforcement of posted producers' prices in interstate commerce than that they will accept fixed producers' prices.

The prices negotiated by producer associations and dealers under these voluntary agreements would in any case have needed to be kept fairly closely in line with prices of competing dairy products in the same area. Any attempt to establish prices with a large monopoly element in them would have broken down the agreements.

If fluid milk prices were to be raised to parity level under the foregoing set-up, this would have had to come about through raising the prices of dairy products in general, and this could have come only as a result of positive restrictions on production such as were applied to hogs. The discussion on this point in Chapter XIII leads to the conclusion that the AAA was wise in not undertaking such control in 1933 or even in 1934. Nevertheless, it was needed if dairy prod-

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uct prices were to be raised significantly toward parity.

If prices of milk were to be raised by individual markets, the only effective method would have been to define the boundaries of milksheds and apply total production quotas to individual producers. The legal status of such an undertaking was dubious. It clearly looked like control of production within a state. Moreover, it would have laid a foundation for continuation of such efforts after prices of competing dairy products had reached parity. On the other hand, an adequate treatment of the problems of milk marketing may call at a later stage for a degree of planning of production that includes defining of sources of supply and regulation of shipments. It may even call for public ownership and operation, or full public utility regulation. Accordingly a certain amount of experimentation with positive production control by individual markets at this stage might have contributed to progress.

We may well pause and review at this point the reasons that the AAA program for dairy products has made so little headway along the lines indicated. First should be mentioned the condition of the industry itself. Dairy producers and their organization leaders were not in a state of mind to urge production adjustment in 1933 when the growers of the other basic commodities were pressing strongly for action; and only half of such a mind in 1934. The magnitude of the control undertaking involved kept the AAA leaders from urging the industry into it. The organization leaders were interested in marketing control; but conditions were not favorable to the success of the kinds of marketing control which they sought. Milk markets in 1933 and 1934 were shot through and through with the particular forms of competition which make price

fixing and similar controls difficult to obtain; and economic conditions within and without the industry nourished these forms of competition.

The failures of the AAA dairy program have sometimes been attributed to defects in the Adjustment Act. If all the changes which were incorporated in the recent amendments offered to Congress—provision for fixing prices to producers but not resale prices, the more specific definition of the interstate basis of control, the more definite prescription of rules for the exercise of delegated powers, the authorization of base rating and equalization of sales, imposition of fines instead of revocation of licenses for violation, etc.—had been written into the original act, we should now be a little nearer than we are to the solution of the marketing control problems outlined in this volume. But we should be far from having them solved. The struggle over resale prices might have been saved. On the other hand, the dairy interests might now be strongly advocating resale price fixing. (There would have been continual argument that the lack of it was the cause of the failure of control.) The AAA might not have attempted to stretch the term “directly” as applied to “affect, obstruct, or burden interstate or foreign commerce” as far as it did the more general language of the original act; but a good conjecture is to the contrary. As many court cases would probably have arisen under one statement as under the other—the difference is that we should now be nearer to a definition of “directly.” Delegation of powers has not been a major issue in the milk cases thus far; but it was about to be one when the Schechter case developed. Price fixing might or might not have survived in the Baltimore and Boston cases if specifically provided in the original act; it might still be awaiting final decision by the Supreme Court. To sum-

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marize under this head, the government might have won somewhat more of its cases if the act had been drawn in the first place as under the present amendments; also some of the issues would be nearer to settlement in the courts. Also possibly, as has been averred, if the power granted the AAA had been more exactly defined, the Legal Division and the Department of Justice would have pressed cases more vigorously, and this would have made enforcement more successful.

Probably most important of all, if we may judge by the experience of the state milk control boards, imposing fines upon violators instead of revoking their licenses would have simplified greatly the task of operating markets under licenses and might have kept a majority of the markets from getting into the courts.

The provisions of the original Adjustment Act relating to production control have also been cited as an obstacle to progress in that they did not permit the income from processing taxes to be used in purchases of surplus dairy products and surplus cows. This defect, if defect it is, has been removed in the recent amendments and we probably shall have a basis to judge how valuable such an authorization would have been. Although the AAA leaders considered that such a procedure would yield little if any net gain to the producers, processing taxes on dairy products probably would have been levied in the winter of 1933-34, and purchase operations using the income therefrom would have been under way in the spring of 1934 when the Jones-Connally Act was passed. However unpopular the taxes might have proved to be at the time, the drought and its accompanying cattle purchase undertaking would have saved the situation for them until the present winter when they would undoubtedly have been blamed for the

decline in butter consumption and the decline would undoubtedly have been greater because of them. The AAA might have been obliged to remove the taxes in consequence, for its instructions on this point are rather specific.

The marketing agreement and license provisions of the Adjustment Act were indeed conceived in haste, and very crudely designed. These crudities must be blamed for a part of the difficulties that followed; but for a relatively small part of them. The major grounds for criticism have to do with the manner in which these provisions were interpreted and administered. The interpretation that led to most of the trouble was that of the act as providing for industry government, even to the extent of price fixing, with the federal government sanctioning such industry control and supporting it by use of its licensing power. If the AAA could have held to a firm position against this, insisting that marketing agreements have the support of all the significant elements in any market, refusing to use its licensing power except in extreme situations, and perhaps in addition concentrating its enforcement efforts upon fair competition rather than price fixing, it would have escaped most of its serious setbacks and would have been nearer to a stable working organization in most milk markets than it is today.

Of course the AAA was not wholly responsible for the interpretation given these provisions of the act. At the outset it opposed such an interpretation, as Chapter IV makes abundantly clear. But all industry and trade from the lowliest groups of merchants and shopkeepers to the high and mighty steel, lumber, and textile industries, was busy night and day drafting NRA codes designed to provide

industry self-government. The milk producer associations and the milk distributors contracting with them had been fixing their minds upon similar application of the Adjustment Act from the time of its introduction in Congress in March. As they saw the situation, they already had the industry set-up needed to provide such self-government. Little else was needed except that the federal government make the minority elements submit to the industry authority. The AAA could have stood off their demands only by denying to one large group of supporters of the Adjustment Act the one thing for which they supported it. It is more than possible that the producer association and dealer groups would have had nothing to do with marketing agreements without licenses, or for agreements without price fixing in them. The first Chief of the Dairy Section had views on this subject much like those of the association and dealer groups.

An essential part of this conception of industry self-control under government support was a delusion as to the potency of public authority. Fifteen years of largely ineffective effort at enforcement of prohibition under the Eighteenth Amendment had not taught the producer and dealer interests in the dairy industry the futility of control by government fiat. The inclination of many in the "New Deal" group of government workers to magnify the role of government led them to fall into this same delusion.

There is no gainsaying the conclusion that the dairy product part of the AAA program has not been well administered. This statement must not be taken as criticism of the efforts of the personnel of the staff of the Dairy Section, especially of its personnel since January 1934. It is primarily to be attributed to the circumstance that a government agency was called upon to undertake some-

thing which nobody knew how to do and which perhaps could not be done at all under existing limitations. There were those on the outside who thought they knew how; but events since have proved that they were as wrong as anybody else. Nevertheless, there were serious administrative deficiencies which contributed in large measure to the lack of progress. The Administration, from the Secretary down, did not function well in dealing with dairy problems. The administrative set-up in which the Dairy Section worked until the recent reorganization of the AAA was a severe handicap. The procedures by which dairy policy was determined, and decisions on agreements and licenses finally reached, were cumbersome, time consuming, and throttling. Conceiving wrongly the function of the Consumers' Counsel added to the delay and confusion. The Legal Section was not equipped with the type of experienced personnel needed to handle dairy problems, and its conduct of its affairs in this field was not always as helpful as it should have been. On the other hand, the administrators were altogether too much inclined to rush into undertakings before the legal implications were fully explored, and to belittle the legal objections raised. Finally, certain major mistakes made in the first organization and selection of personnel of the Adjustment Administration took unusually heavy toll upon the dairy program.

The deficiencies in the administration of the dairy program have frequently been presented in terms of the weakness of the enforcement efforts. This assumes that the arrangements set up were such as could or should have been enforced—which is much to be doubted. Had the legal status of the marketing agreements and licenses of the Adjustment Act been certain and secure from the beginning, and had they included no questionable or seri-

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ously objectionable arrangements as to prices, base ratings, equalization of returns, check-offs, and the like, no doubt a well-manned and efficient enforcement staff could have prevented any large-scale and widespread violations at the outset in a majority of the markets; and this mastery of the situation probably could have continued for several months and possibly for a year or two under favorable conditions. However, actual experience with evasions, under state as well as federal control, indicates that some of them are of such form that they would have been about as difficult to detect and prevent as bootlegging of liquor, and that the general tendency would have been toward more rather than less evasion. We do not generally abandon control, however, whenever it fails to be complete and absolute, and it is more than possible that sufficient enforcement would have continued to make price fixing feasible in favored markets.

Nothing which is said in this or earlier chapters can properly be taken as opposing the grant to organized groups of producers or dealers or to an organized industry a large role in the management of industry affairs in any kind of a planned or partly planned society, or even in such a society as prevailed before 1933. But such group or industry self-government must be fitted into the general functioning in such a way as to contribute most to the social product. The fundamental conception of the *laissez faire* philosophy is that the social product is greatest when each individual is free to seek his own highest self-interest. A counterpart of this could be stated in terms of the philosophy of syndicalism; namely, that the social product is greatest when each association (producer co-operative, dealer association, trade association, labor union) is allowed

to seek its highest self-interest. The public now increasingly realizes that both conceptions are wrong, the second even more than the first. A society composed largely of organized groups each seeking its own ends would defeat itself utterly. A major task of society in the next few generations is to develop procedures by which these groups can collaborate with the state in attaining ends common to them and to the state. The marketing agreement procedure outlined in the Adjustment Act offered interesting possibilities along this line. Thus far these possibilities have been very little realized in the dairy product field.

Some critics of this book in manuscript have said that the author is not disposed to favor for milk producer co-operatives the same exclusive control of supply and prices that labor unions are now accorded. Several answers are possible. One is that analogies between labor and a commodity are dangerous. Another is that a producer association's control over the milk supply may easily be more nearly absolute, so far as any one large dealer is concerned, than that of a labor union over the labor supply. Another is that a particular employer will in most situations oppose a wage increase more vigorously than a particular dealer will oppose an increase in the price of milk, since all the dealers in a market are likely to raise the resale price together, and hence none but the consumer stands to lose much from it. The most important answer is that the control over wages accorded labor unions must be a restricted control. It is certain to become more restricted the more that unions are protected by government. Wages must increasingly be adjusted in such a way as to contribute most to the social product. One can condemn such régimes as those of Mussolini and Hitler, and still remark that the fates meted out to labor unions in Italy and Ger-

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many are in no small measure attributable to positions taken by them that stood in the way of needed economic readjustments. We have had abundant evidence of such functioning of labor unions in this country in the past few years. Producer co-operatives need to steer away from such pitfalls, and the safe course to follow is that of collaboration with the government.

For the final section of this chapter, let us consider the various lines which further developments in the AAA program for dairy products may take. Of course much depends upon what happens to the AAA undertaking in general. It may easily break down for two reasons, even though processing taxes, price fixing, and the use of "orders" are sustained by the courts.

In the first place, the pressure from producer and trader interests for "pegging" prices above the market level possible under the original act, but now definitely stimulated by the provisions of the "ever normal granary" in the recent amendments, can wreck the whole undertaking by causing the government to take over holdings of farm products which the producers may later refuse to take as benefit payments. On such questions the individual congressman reflects the demands of the producers and traders, and the President of the United States is likely to accede to the requests of groups of congressmen because he needs their support on other parts of his program. The Secretary of Agriculture and the Administrator of the AAA are likely to find themselves similarly constrained. In the second place, the demand of producers for higher prices may cause the Administration to reduce output and raise prices above the level of parity including the benefit payments, which will destroy the basis for adequate processing taxes, in

case these continue as the source of income for financing the production adjustments. Here again one may question the ability of those in authority to resist the pressures which will arise.

In case the AAA has to abandon the use of processing taxes, the needed income could perhaps be collected as sales taxes on farm products, and Congress could make appropriations from the federal treasury for land-use control undertakings that might well achieve the ends desired more directly and more effectively than they are being attained through the present approach by individual products. Effective adjustment procedure requires that the present production controls be converted essentially to a land-use basis. Producers are not likely to be ready or willing to take this step in the near future if they are able to retain their processing taxes and benefit payments on individual products. At present the prospects for important aid from a parallel direct land-use approach to the problem are far from encouraging. We may therefore expect a serious crisis in the production control program within from three to five years even if the courts do not interpose obstacles sooner. The abandonment of processing taxes might assist in making the needed changes, if Congress could be depended upon to pass the substitute legislation required.

If the processing taxes stand the test of the courts, and milk production increases as is now expected, control stands a fair chance of being undertaken in this field within the next year in the form of dairy product purchases, and perhaps also cattle purchases, out of funds derived from processing taxes. The latter may prepare the way for more thoroughgoing production control efforts later. Dairy producers, however, are not likely to be pleased with the

immediate effects of a procedure involving the purchase of cattle out of processing taxes. A land-use approach to production adjustments would raise some interesting questions for the dairy industry.

Fortunately the Schechter decision has definitely pointed the way to such collaboration between the dairy industry and the state as has been indicated above; and the new amendments have been constructed with such a course of action in mind. But the details of such collaboration have still to be arranged. Upon their successful consummation depends in large measure the future of marketing control for dairy products. Some set-up of the general order of that outlined in Chapter IX under the name of "collective bargaining under effective public control" would seem to be required. If the AAA is to carry out effectively its part in such an undertaking, it needs a more complete information and analysis service than it has thus far been able to provide.

We must not deceive ourselves, however, into thinking that harmonious and effective working arrangements between the AAA and local industry groups will be readily attained in any market. To achieve such a result in one market in the next few years will be an important contribution to social progress. In the meantime we can hope for progress toward that goal in a number of other markets.

Only experience can determine the wisdom of uniform prices to producers in milk marketing agreements. Congress is probably wise in providing for them in the new amendments. If the Supreme Court accepts price fixing for milk in interstate commerce, the AAA will know that it has authority to impose uniform prices. If the court rules otherwise, as may well happen, other arrangements can be devised which will attain any ends reasonably desired.

If experimentation in fixing milk prices is still needed, the states can provide it.

The actual situation in most milk markets under license at present is that until the legal position of the control program is established, and base ratings, equalization, and other phases of the program can be put upon a better basis than now, enforcement is likely to be far from complete if not altogether hopeless except where the producers' association and its contracting dealers are in position to force the violators out of business by buying away their milk supply, denying them means of securing return of bottles, or using other such extra-legal and probably socially undesirable measures.

At the best, with all the foregoing essentials to good enforcement fully provided, the task of establishing it in a market where it has largely failed in the past two years is likely to prove difficult. Unless a marketing agreement can be devised which is reasonably acceptable to all interests in the market, to the several minority groups as well as the majority group, to the consumers as well as the producers and dealers, there is little prospect of successful enforcement. This means that the provisions of the agreement and license must be such that these groups are satisfied that they will share about equally in the gains to be obtained for the market as a whole. To put into an agreement or license any arrangement that represents the successful effort of one group to "put something over" on another group, or to follow a course of action that represents wholly the interests of only 50 per cent of the producers or dealers or of both combined, will be fatal to the success of enforcement. The only role which enforcement can fill successfully is that of seeking out the violators who do not understand and explaining the working of

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the agreement, and apprehending the few malicious characters likely to be found in any group of milk dealers and producers, as in any other group of citizens.

It thus appears that most of the task of enforcement is already done when an acceptable marketing agreement has been developed; and unless this is done, no enforcement is likely to succeed long.

As explained more fully earlier, seldom can a plan for collaboration to the mutual advantage of the different groups be developed except on the basis of a constructive analysis of all the elements in the situation, and presentation of these in such form that each group can see clearly what it has to gain or lose from the arrangement; and likewise what each other group has to gain or lose. The original marketing agreements were drafted in the midst of darkness and confusion, and the fog and storm have only a little lifted in most of the markets since.

The future will also need to determine the extent of federal control over markets drawing their supplies from more than one state. If the courts define the term "directly" with extreme rigor, state control boards will have a larger duty to perform. But the states will have the same problems of collaboration with industry as herein outlined for the federal government. In some important respects most of them are further from the goal of such undertakings than is the AAA because they are still relying more largely upon enforcement procedures.

The most serious issue now to be settled by the courts is whether the "orders" in marketing agreements provided in the recent amendments will be any more acceptable than the licenses in the original act. The essence of the problem is the right of a majority to impose its will upon a minority in such matters as are covered in marketing agreements

drawn under the rules laid down in the amendments. The point has been made in the discussion that economic differences are better settled whenever possible by reconciling or compromising the interests involved, whether this be done in the market place or by a public agency, rather than by giving a 51 per cent majority wholly its will. The courts may consider that the majority decision provided in the amendments represents taking property without due process of law. Probably the answer depends much upon the nature of the matters that are determined by such voting. Prices may be declared as outside the sphere of majority determination; rules against secret rebates not. Also, much depends upon the type of agency set up to administer the rules. Grounds for hope remain that a body of practices and procedures vital to the effective operation of milk markets can be put under the control of some appropriate type of public agency in which industry and locality are represented as well as the state, even though the provisions in the present act and its amendments are found wanting.

APPENDIXES

APPENDIX A

PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT RELATING TO DAIRY PRODUCTS¹

Sec. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments;

(2) *After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce.* The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this act. . . .

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing acts of Congress or regulation pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing

¹ Including the 1934 amendments, which are printed in italics. For pertinent excerpts from the 1935 amendments, see Appendix G.

thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, or violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than \$1,000 for each day during which the violation continues.

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of Part 2 of this title.

Sec. 9(b). The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate *on the processing of the commodity generally or for any particular use or uses* will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that *any* such result will occur, then the processing tax *on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses* shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity.

Sec. 9(c). When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the

price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

Sec. 11. As used in this title, the term "basic agricultural commodity" means wheat, *rye, flax, barley*, cotton, field corn, *grain sorghums*, hogs, *cattle*, rice, tobacco, *sugar beets and sugar cane, peanuts*, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof, if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof.

Sec. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are requisite to carry out the declared policy with respect to such commodity. *In the case of sugar beets and sugar cane, the taxes provided by this title shall cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate at the end of three years after the adoption of this amendment unless this title ceases to be in effect at an earlier date, as hereinabove provided.* The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

APPENDIX B

STATISTICAL TABLES

1. PER CAPITA ANNUAL CONSUMPTION OF DAIRY PRODUCTS IN THE UNITED STATES, 1926-33

Year	All Products (Milk equivalent, in gallons)	Milk Used in Cities and Villages ^a (In gallons)	Butter ^b (In pounds)	Cheese ^c (In pounds)	Con-densed Milk (In pounds)	Evapo-rated Milk (In pounds)
1926.....	94.9	39.3	17.76	4.36	2.75	11.56
1927.....	94.7	39.6	17.49	4.14	2.60	11.59
1928.....	94.4	39.8	17.12	4.11	2.56	12.50
1929.....	94.2	40.8	17.29	4.62	2.75	13.83
1930.....	95.0	40.6	17.30	4.71	2.66	13.68
1931.....	96.7	40.0	18.00	4.49	2.29	13.70
1932.....	95.5	40.0	18.14	4.39	1.80	14.41
1933.....	92.9	38.8	17.68	4.51	1.66	14.23

^a Milk and the milk equivalent of cream consumed per capita by that part of the population not on rural farms. These estimates include some milk and cream used in such products as ice cream.

^b Includes both farm and factory butter. These estimates include some butter used in other products such as ice cream.

^c Includes all kinds of cheese except cottage, pot, and bakers'.

2. ESTIMATED DAILY PER CAPITA CONSUMPTION OF MILK AND CREAM IN CITIES AND VILLAGES, 1923-33^a
By Geographic Divisions
(In pints)

Year	United States	North Atlantic States	North Central States	South Atlantic States	South Central States	Western States
1923.....	0.83	0.94	0.88	0.59	0.62	0.84
1924.....	0.85	0.95	0.89	0.62	0.64	0.87
1925.....	0.85	0.95	0.91	0.60	0.63	0.88
1926.....	0.86	0.97	0.92	0.60	0.64	0.89
1927.....	0.87	0.98	0.93	0.60	0.65	0.87
1928.....	0.87	0.99	0.92	0.61	0.67	0.86
1929.....	0.90	1.01	0.93	0.66	0.71	0.87
1930.....	0.89	1.00	0.93	0.66	0.70	0.89
1931.....	0.88	0.99	0.92	0.65	0.68	0.87
1932.....	0.88	0.98	0.91	0.65	0.67	0.87
1933.....	0.85	0.94	0.89	0.63	0.65	0.88

^a Cream is converted to its milk equivalent. The quantities of milk here shown as consumed are those indicated by reports from local boards of health. Current estimates of sales of milk and cream from farms and current estimates of milk production by cows not on farms, if confirmed by further study, would indicate a lower level of milk consumption in the South, particularly in the South Atlantic states. These data are from a report of the U. S. Department of Agriculture issued on May 24, 1934.

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3. COMPARISON OF DAIRY PRODUCT PRICES WITH OTHER FARM PRODUCTS AND PARITY PRICES
 By Years, 1910-32, and by Months, January 1933-February 1935
 (1910-14 average = 100)

Year	Actual Prices		Parity Prices	Year	Actual Prices		Parity Prices
	Farm Products	Dairy Products			Farm Products	Dairy Products	
1910.....	102	99	98	April.....	53	59	101
1911.....	95	95	102	May.....	62	63	102
1912.....	100	102	99	June.....	64	65	103
1913.....	101	105	101	July.....	76	71	107
1914.....	101	102	100	August....	72	72	112
1915.....	98	103	105	September..	70	76	116
1916.....	118	109	124	October...	70	78	116
1917.....	175	135	149	November..	71	78	116
1918.....	202	163	175	December..	68	76	116
1919.....	213	186	200	1934:			
1920.....	211	198	194	January...	77	84	117
1921.....	125	156	150	February..	83	92	119
1922.....	132	143	146	March.....	84	95	120
1923.....	142	159	149	April.....	82	91	120
1924.....	143	149	150	May.....	82	91	121
1925.....	156	153	154	June.....	86	93	121
1926.....	145	152	153	July.....	87	94	122
1927.....	139	155	151	August....	96	97	125
1928.....	149	158	153	September..	103	99	126
1929.....	146	157	152	October...	102	100	126
1930.....	126	137	144	November..	101	105	126
1931.....	87	108	124	December..	101	107	126
1932.....	65	83	107	1935:			
1933:				January...	107	112	126
January...	60	81	102	February..	111	121	127
February..	55	74	101	March.....	108	114	127
March.....	55	71	100	April.....	111	117	127
				May.....	108	107	127
				June.....	104	99	127
				July.....	102	96	126

4. COMPARISON OF ACTUAL AND PARITY PRICES OF SPECIFIED DAIRY PRODUCTS^a

By Years, 1921-32, and by Months, January 1933-February 1935
(1910-14 average = 100)

Year	Butterfat (In cents per pound)		All Milk Sold at Wholesale (In dollars per cwt.)		Milk Sold to Distributors (In dollars per cwt.)	
	Actual	Parity	Actual	Parity	Actual	Parity
1921.....	38.4	40.0	2.84	2.72	2.67	2.73
1922.....	36.6	39.2	2.53	2.67	2.31	2.67
1923.....	43.2	40.0	2.79	2.72	2.69	2.73
1924.....	40.5	40.0	2.50	2.72	2.63	2.73
1925.....	42.3	41.3	2.56	2.81	2.67	2.82
1926.....	41.9	40.8	2.51	2.77	2.74	2.78
1927.....	44.4	40.2	2.53	2.74	2.72	2.75
1928.....	46.0	40.8	2.56	2.77	2.77	2.78
1929.....	45.1	40.2	2.56	2.74	2.81	2.75
1930.....	35.0	38.1	2.30	2.60	2.68	2.60
1931.....	25.4	32.6	2.30	2.22	2.20	2.23
1932.....	18.1	28.1	1.77	1.92	1.72	1.92
1933:						
January....	18.9	26.8	1.25	1.83	1.55	1.83
February...	15.8	26.6	1.16	1.81	1.50	1.81
March.....	15.1	26.3	1.10	1.79	1.46	1.79
April.....	16.5	26.6	1.08	1.81	1.47	1.81
May.....	20.2	26.8	1.14	1.83	1.45	1.83
June.....	19.7	27.1	1.21	1.84	1.49	1.85
July.....	23.0	28.1	1.33	1.92	1.57	1.92
August.....	18.4	29.5	1.39	2.00	1.67	2.01
September..	19.6	30.5	1.47	2.08	1.72	2.08
October....	20.1	30.5	1.51	2.08	1.77	2.08
November...	20.4	30.5	1.51	2.08	1.79	2.08
December...	18.0	30.5	1.49	2.08	1.80	2.08
1934:						
January....	16.1	30.8	1.44	2.09	1.81	2.10
February...	21.6	31.3	1.48	2.13	1.80	2.14
March.....	23.5	31.6	1.50	2.15	1.79	2.15
April.....	21.0	31.6	1.46	2.15	1.81	2.15
May.....	21.5	31.8	1.45	2.17	1.81	2.17
June.....	22.2	32.1	1.47	2.18	1.82	2.17
July.....	22.1	32.1	1.50	2.18	1.86	2.19
August.....	24.3	32.9	1.52	2.24	1.91	2.24
September..	24.0	33.1	1.57	2.26	1.97	2.26
October....	24.3	33.1	1.60	2.26	2.02	2.26
November...	27.2	33.1	1.65	2.26	2.03	2.26
December...	28.2	33.1	1.69	2.26	2.04	2.26
1935:						
January....	30.5	33.1	1.76	2.26	2.05	2.26
February...	35.9	33.4	1.82	2.27	2.07	2.28
March.....	31.2	33.4	1.78	2.27	2.09	2.28
April.....	33.8	33.4	1.78	2.27	2.07	2.28
May.....	27.5	33.4	1.71	2.27	2.07	2.28
June.....	23.7	33.4	1.58	2.27	2.06	2.28
July.....	22.3	33.1	1.55	2.26	2.04	2.26

^a Not adjusted for seasonal variation.

APPENDIX C

THE METHOD OF COMPUTING PARITY PRICES FOR DAIRY PRODUCTS¹

BUTTERFAT, FARM BUTTER, AND MILK SOLD AT WHOLESALE.

In order to determine the farm prices for dairy products which would be equal, in terms of purchasing power, to such prices in the base period, it is necessary to adjust (multiply) average farm prices by the index of prices paid by farmers for commodities bought. Thus, if the prices paid by farmers for commodities bought by them in the base period is taken to be 100, then, for subsequent or other periods, in order for a unit of an agricultural product to purchase the same amount of the commodities farmers buy as such unit would purchase in the base period, the price of such unit must vary directly and proportionately with the prices of commodities farmers buy. Therefore, in order to compute the price for any given farm product that will purchase per unit the same volume of commodities farmers buy that such unit would purchase in the base period, the average farm price of such farm product during the base period must be multiplied by the index of prices paid by farmers for commodities bought during the period for which the so-called parity price or fair exchange value for the farm product is to be determined. The resulting figure, adjusted for seasonal variation if the fair exchange value is to be determined on a monthly basis, is the parity price or fair exchange value of the farm product. On the basis of the official figures, the difference between the farm prices of specified dairy products and the fair exchange value of such products as of December 1934 was as follows:

Butterfat	7.3 cents per pound
Butter (farms)	7.8 cents per pound
Milk sold at wholesale.....	64.0 cents per cwt.
Index of farm prices of dairy products.....	19.0

The foregoing figures represent the limit by which prices of

¹From *Dairy Memorandum No. 2.*

specified dairy products could have been raised as of December 1934, under programs instituted by the Agricultural Adjustment Administration (provided the percentage of consumers' retail expenditures for such products returned to the farmer was no greater than such percentage during the base period).

CLASS I MILK

Figures are available in the Department of Agriculture with respect to Class I milk (milk used for distribution as fluid milk) for a number of markets. The period covered by such figures varies widely between markets. Milk has been paid for on a use basis only since about 1918 and then only in relatively few of the larger markets. Thus, there are no figures relative to the price of Class I milk as such during the base period. Milk sold for distribution as fluid milk commands a rather large premium over milk sold for other uses. Therefore, it is obvious that the policy of Congress could not be effectuated by establishing Class I prices within the limits of the parity price for milk sold for other uses. As a matter of fact, in many cases, the actual Class I price for milk in many markets is above the parity price for milk sold at wholesale (milk which is used in the manufacture of butter, evaporated milk, ice cream, etc.) for the states in which the markets are located, regardless of whether or not the markets are operating under a federal milk license.

In view of the above, it has been necessary to compute parity prices for Class I milk in the markets operating under a federal milk license. These parity prices have been computed in accordance with statistical technique which is accepted as methodologically sound and used in the development of various series by the United States Department of Agriculture, Bureau of Agricultural Economics. The statistical device used in computing parity prices is an attachment device, and in order to establish the fact of the use of such device by the United States Department of Agriculture, Bureau of Agricultural Economics, the publication entitled "Index Numbers of Prices Paid by Farmers for Commodities Bought, 1910-1932," published in June 1933, by the United States Department of Agriculture, Bureau of Agricultural Economics, is by reference included in this report.

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The computation of the parity price for Class I milk in any particular market includes the following steps:

1. A comparison of the average Class I prices in the market and the average state (or states) farm prices of milk sold at wholesale during the period of 1923 to 1929, or during the period for which such Class I prices are available. The period 1923-29 is used because it represents a period during which the price movements of dairy products were fairly uniform and the relationships between the prices of dairy products were fairly constant. Furthermore, the period 1923-29 represents a more normal period than any other since the 1909-14 base period.

2. The state (or states) average price of milk sold at wholesale during the base period is increased by adding thereto the sum derived by multiplying such average by the percentage difference between the Class I and the state wholesale series during the period 1923 to 1929. The resulting price is the base period price for Class I milk. This figure is then multiplied by the current index of prices paid by farmers for commodities bought and adjusted for seasonal variation, the resulting figure representing the computed fair exchange value of Class I milk.

APPENDIX D

EXCERPTS FROM DR. CLYDE L. KING'S DISCUSSIONS OF DAIRY POLICY

A TENTATIVE OUTLINE OF A PROGRAM FOR THE DAIRY INDUSTRY¹

The dairy products program of the Agricultural Adjustment Administration contemplates effectuating the declared policy as set forth in the Agricultural Adjustment Act through marketing agreements. In addition, . . . licenses in milk markets may be issued.

While programs and procedure are outlined separately on the various manufactured milk products and the various fluid milk areas for the sake of speed and convenience, it is proposed at all times to keep in mind the proper co-ordination of the respective branches of the industry.

Manufactured Milk Products. Marketing agreements for manufactured dairy products will be directed primarily at (1) the elimination of practices tending to disrupt price structures, (2) a reduction in marketing expenses through the elimination of unfair and costly competitive practices, and (3) encouraging such marketing methods and practices as will result in increased consumption.

It is contemplated that agreements covering each major manufactured milk product will, as far as possible, be drawn on a national basis for administrative purposes though such national agreements may be supplemented by agreements pertaining to specific regions or local areas.

A national agreement covering the marketing of evaporated milk has been drafted and a public hearing held thereon. Somewhat similar agreements are being prepared for butter, cheese, ice cream, and dry skimmed milk. Supplementary regional or local agreements are being considered for butter and ice cream.

Milk for Consumption as Milk or Cream. Marketing agreements for milk for consumption as milk (referred to as fluid milk) will, in general, have the same purpose as outlined for manufac-

¹ Prepared for administrative use—mimeographed.

tured products. It is recognized that state and municipal regulations with respect to the production and sale of milk and cream for consumption as milk or cream are frequently such as necessitate prices for such milk being above prices for milk for manufactured purposes.

Such fluid milk agreements we feel should contain provisions that will tend to reduce milk production in fluid milk areas so that farmers producing milk for manufactured products may not have their markets unduly flooded by whole milk markets.

Agreements covering the marketing of fluid milk generally set up production areas within which individual dairymen are allotted (1) specific quantities of milk which may be sold for fluid purposes at named prices and (2) specified quantities of milk which may be sold for manufacture into cream at prices somewhat lower than indicated for the first but above prices for milk for manufacturing purposes. Additional milk sold is at a third stated price, lower than either of the first or second and is usually milk used for the manufacture of such products as butter, cheese, evaporated milk and ice cream.

Marketing agreements under the act must relate to interstate commerce.

... If deemed necessary licenses may be issued to all processors and distributors of milk in the area covered by the agreement, whether or not they have signed the agreement, so that uniformity of milk prices and distributive practices within the area may be obtained.

No one will be required to apply for licenses since all processors and distributors will be licensed without application.

THE OPERATION OF THE AGRICULTURAL ADJUSTMENT ACT WITH REFERENCE TO DAIRY PRODUCTS²

The good work of the co-operatives in the whole-milk field in the past ten years certainly leads us to one of the embarrassments of the industry at the present time, and that is that the price for milk, taking the United States as a whole, has been the best price of any basic commodity produced by farmers in the United States or

² Address before American Institute of Co-Operation, July 24-29, 1933.

in the world. That result was only by the determined effort of such co-operative organizations that combine to make this milk federation. The co-operatives have not only secured prices. They have secured honest weights and measures. They have secured assurances of fair tests, and they have given to the farmers that thing more precious than prices, and that is the opportunity to sit down and barter fifty-fifty across the table, with the men who buy their products.

Another reason why I believe in co-operatives, is this. I do not know how long this Agricultural Adjustment Act is going to last; I presume until the next session of Congress; for I hope that we may see pre-war parity in milk prices before next January, provided of course that the prices of other farm products go up so that the farmers will have alternatives other than milk production. In any case we must be ready to carry on in a permanent way whatever good may come out of this New Deal, in which I believe strongly.

But permanent good can come out of these efforts only as the farmers of the United States themselves organize to run their own show, so that when the government has done its work, agencies will exist which can carry on that work better than any governmental agency ever can.

Now let us turn to the purposes of the New Deal. If I understand the spirit of the New Deal aright, it consists of two things; (1) getting rid of the gyp; (2) convincing farmers that they can get higher prices only as they produce less. Now, neither of those things will be easy to accomplish. One fundamental tradition of American civilization is that everybody ought to do exactly as he pleases. To continue that tradition means to continue the depression to the point where the man with the lowest living standard and the lowest wage can set the price for all folks regardless of whether or not legitimate industry would like to set a higher price. For I submit to you that the depression was continued at least two years and we were dragged to the precipices of actual destruction of our civilization by what I am pleased to call the gyp, the chiseler, the man who is ready to go out and buy at the least possible price and sell at the lowest possible price regardless of the well-being of the farmers, and regardless of the well-being of the country. It was this process of deflation carried on by gyps and chiselers, deter-

mined to put in their own pocketbooks a few dirty nickels, at the expense of others, that in my humble judgment carried the depression to the depths we know. If the New Deal does not make it possible to put the well-being of the industry and of the group first over the selfish interest of anyone who wants to gyp the game, I say to you the depression will be on again in six months with a crisis such as we have never known before.

In my interpretation of who are the gyps I would like to be a little inclusive. I would like first of all to include those members of co-operative organizations where, say, basic surplus plans have been devised, who gyp the plan, do not live up to it, and do not have the loyalty to stand by their organization.

I would like to include in this group of gyps the producer-distributors who have been willing to undermine the market, already brought to higher standards by co-operative organizations, without any regard to the best interests of the whole.

I would like to include some distributors who have been ready to go to any place howsoever distant, and buy any product that was white and come in and sell it in competition with farmers who are compelled to produce milk under health standards and other standards set up by the state and city, which costs a lot of money.

Let me turn, if you please to the Agricultural Adjustment Act and what is going to be done under that act for the dairymen. I must distinguish in my remarks between the fluid milk dairymen and butter and cheese and the other manufacturing groups.

First of all, there must be trade agreements. Under the law all those trade agreements must have to do with milk in the current of interstate commerce. That certainly means that any purely local relationship between local producers and local distributors solely within a state unrelated—and please keep that work in mind—to interstate commerce can in no wise come under the protection of the Agricultural Adjustment Act as hoped.

The facts are, however, as I see them, that all milk in the United States is in interstate commerce. There is no such thing as local shipment of milk, the price on which cannot be broken by interstate shipments. And local shipments can burden interstate commerce.

All fluid milk prices are related to the prices for butter, cheese, dry milk, evaporated milk, ice cream, all of which products enter into interstate commerce. Fluid milk prices break down invariably when too far out of line with the price of milk going into manufactured products. Hence to protect the prices of milk and its products that are in the current of interstate commerce we must give equal protection to milk flowing into intrastate commerce.

Now these milk marketing agreements will provide for the elimination of practices that tend to disrupt the price structure. Reducing marketing expense through abolishing unfair trade practices and encouraging such marketing methods and practices as will result in a better product and therefore in increasing consumption I hope ought to bring milk to the consumer's doorstep at the least cost and at a price to producers that will bring pre-war parity, at least as soon as marketing conditions thus assisted will permit.

We could not be doing our duty in the milk trade agreements unless we put in all of them a provision that there must be some plan for controlling and decreasing production. Any dairyman who knows the facts knows that we are now within one per cent of the exporting of dairy products. This is another way of saying that if we produce one per cent more we are beyond the protection of the tariff, because the exporter of goods will set our prices. Our prices will be fixed by New Zealand and Australia and the other agricultural producing countries of the world, just as wheat prices and hog prices have been set by the hog and wheat-producing sections of the world. Hence it is in the interest of every dairyman to put milk under tariff protection. The dairyman is one of the few farmers who gets protection under the tariff in the sense that we are producing less than our present demand. Hence it is to the interest of every farmer, whether producing butter, cheese, whole milk or evaporated milk, to see that production is reduced so as to keep the total output somewhat below domestic needs.

STABILIZATION IN THE DAIRY BUSINESS ³

So I have placed as the first plank in the stabilization program for the industry the recognition of co-operatives and the support

³ Address before International Association of Milk Dealers, Sept. 21, 1933.

of the young men who, through hard knocks, have in the last few years learned a great deal about milk marketing.

A second essential, it seems to me is that in these whole milk-sheds there must be territorial limitations. If the cities and the states are to place health requirements as to sanitary conditions under which milk is to be produced, it is only fair that there be an adequate territorial limitation so that the farmers who have those added costs may benefit from the possibility of reasonably higher prices to compensate these costs.

If the fluid milk groups, however, are to have the advantages of territorial limitations (and I believe they should have them) it is only fair that they should meet the farmers who produce milk for butter or dry milk or evaporated milk or other manufacturing purposes, with production control programs so that these fluid milk areas do not throw out a great quantity of manufactured products to the detriment of the farmers who are selling milk to the manufacturing plants.

I think the very existence of territorial plans requires that all of you who are in whole milk areas see to it that you have production control programs that will not only protect your own markets from oversupply but will also make certain that there is not from these areas a flood of milk for manufacturing purposes from surpluses that do harm in the long run to the farmer who produces milk for butter and cheese and other products.

We have therefore insisted in every trade agreement that there be some plan of production control. We have never said that we know exactly what that plan of production control should be. Indeed, we are quite convinced that it ought to vary with every area in the United States. But we have insisted that some form of production control, whether it be a basic surplus plan or any modification of it, is prerequisite to approval of a whole milk trade agreement.

Not only must we have some territorial limits but it must be clear, as these trade agreements are set up, that all buyers must buy in that territory on the price and under the plan. If there is to be governmental supervision at all, it must be on the basis of absolutely the same price to everybody in the same territory with

nobody dodging his fair share of surplus costs, whether he handles milk six days a week or seven. I think all of you have an interest in the long run in seeing that everybody buys in the territory on the price under the plan taking their full share of the surplus, whatever the plan that is set up for production control.

Let us now come to the next and most essential part of stabilization as I see it. I think all of us are faced now as never before with the question as to whether milk is going to be kept on the retail wagon. It happens that I have been brought up in a school that believes there is nothing wicked about a retail wagon for milk distribution. I am not interested, as such, in the wagon or wagon driver. The interest of all of us is in the consumption of milk. We want to sell the greatest possible amount of milk to the public because the farmer gets his best price from whole milk and we want the public to consume the greatest possible quantity of milk because it is in the interest of health that that be done.

With those two fundamental premises we have to raise the question as to whether those two ends can be best secured by keeping milk on the retail wagon, assuming, of course, that the milk on the retail wagon can be distributed as economically as through any other channels.

Let us now frankly look at some of the facts. You all know that volume plays a very important part in the cost of milk distribution. If there ever was an industry in which volume counts, when the old law of increasing returns is effective, it is in milk distribution. That is, the greater the volume, the lower the unit cost, all other factors being equal. The greater the volume, with equal efficiency and management, the lower the cost of pasteurizing. The greater the volume, the lower the cost of processing and of bottling and of capping and of refrigeration.

The distributor with any volume at all ought, therefore, from the farm up to the counter of the store, have a unit cost that is lower than any store unless that store has a greater volume. That ought to be fundamental.

Therefore the question of costs runs from the counter of the store to the consumer's doorstep. As a matter of fact, loss leaders

aside and assuming equality in wages, many milk distributors are now putting milk on the doorstep at a cost below that of putting it on the counter of the store or at least at an equal cost.

Therefore, if wagon distribution is efficient with good loads and short hauls, there is no reason that I know of why the wagon distributor cannot put his milk on the doorstep seven days a week at a cost equal to or below that of putting it on the counter of the store six days a week. The habitual consumption is on the doorstep. The greater loss of bottles runs from the counter of the store to the consumer's doorstep.

**REMARKS TO EXTENSION WORKERS' CONFERENCE,
WASHINGTON, D. C.**

The milk agreements are essentially legal instruments. But after these legal instruments are drawn and the procedures are set, all of these whole-milk problems will be thrown right back into the communities from which they came. Our plan is to divide the United States as a whole into eleven districts—New England will be one, New York milkshed two, Philadelphia three, etc. These districts will then be divided into market regions or milksheds. In each market region will be a local market committee to be set up by the folks there. Each of these regions will choose a farmer and a distributor to represent them on the district committee. Those district committees will have to vary in number and, no doubt, in composition. From each of the eleven districts will be chosen one farmer and one distributor to come into the national committee in Washington to handle such problems as are not handled at home. Whole-milk marketing problems are essentially local problems. They are peculiarly one of those problems that will be made worse and not better by national centralization. Each of these local regions has its normal milksheds. These sheds cannot be set up artificially and get good results. By the same token they cannot follow state lines. Indeed, it is not in the interest of anybody that they should follow state lines.

The first and most important prerequisite to stabilization in these local milksheds is that there be local co-operatives around each of them or that they be organized where none now exist and that they be supported and strengthened to the end that when our days

are over, and they may be few, there will be left to continue a body of information and administration that can carry on.

The leaders of the milk co-operatives have been the only farm leaders in the United States who have had to stand up and assume responsibility and take the gaff for declining prices to farmers. Therefore, all the criticisms, fair and unfair, and all the villifications and all the publicity hounds seeking publicity at the expense of the farmers have nagged at these men since 1929. These leaders have, on the whole, done a good job, and a job that has taken ability and rare courage and a great amount of detailed marketing knowledge. To my mind, it would be nothing short of national disaster to lend any influence, locally or nationally, to the destruction of the work of those men.

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Our price goal is pre-war parity. We can get pre-war parity by artificial efforts, but getting it and holding it are two very different things. We have gone slowly enough to make sure that we are not destroying the very possibility of maintaining prices.

The milk industry has two embarrassments—first, the price on milk has been the best on the whole of any staple commodity that the farmer has had to sell for 15 years; second, the industry as a whole has paid the highest wage of any similar industry in the United States of any size or consequence for the same period.

Fair milk prices from the farmers' point of view, is essentially a test of whether the farmers are willing to assure themselves of higher prices by producing less milk at lower cost. Dr. Reed and other folks around here have presented the facts and arguments showing that the feeding of high-cost concentrates is not the least expensive way of producing milk in a nation-wide program. Only as production is lowered can prices be maintained at a higher relative level. A farmer can make more money by producing less milk and by feeding more of the less expensive foods.

The prices on milk have created a surplus of milk by-products such as butter and cheese. . . .

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To stabilize the price of butter, and to stabilize milk prices by other means as well, a processing tax is soon to be levied of one cent a pound.

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The dairy industry is the only farm industry of any size in the United States that has not been on an export basis. With the surplus we now have, the dairy industry is going to be forced on to an export basis unless our production is reduced. Once on an export basis the price of butter must be the London price, less transportation and other costs of getting the butter and other dairy products across the sea. Such a thing as that would be a catastrophe to the dairy business. We must everyone fight to the bitter end to see that the dairy industry is kept on a domestic basis and not on an export basis. Then the tariff can help.

That must mean in the long run a strong definite production control program. There are many phases of that production control program to discuss. The purpose of production control is to keep for the farmers of the West a domestic not a foreign price for butter, cheese, evaporated milk and all other milk by-products.

Everyone of these trade agreements contains a clause saying that the distributors shall keep such accounts as are prescribed by the Administration and that the accountants for the Administration shall have full and complete access to the records and books of those distributors, and the Secretary shall publish from time to time the results of the audit of these books in the form of statistical data. The purpose of these provisions is to keep spreads down to the lowest possible minimum consistent with quality and decent services.

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We are engaged in the uneconomic thing of trying to raise prices to farmers before their markets invite prices to rise. It is the only thing to do.

We have other problems that we must pass on. One is the unethical loss leader. One-half of the milk farmers in the United States in the last ten years have had their prices crashed to a butter-fat level by the determination of some gyp to buy anything that is white and sell at as low a price as possible with as low wages as possible in order to attract some female into his store to buy something else while buying milk and pay for that something else a price high enough to make up the loss on milk. This unethical practice is a detriment to the whole industry. I think an industry

that can't build up its own business without false advertising and false statements of that kind deserves to go by the board.

We have been working on butter agreements and on agreements on cheese, evaporated milk, dry milk, ice cream, and every other branch of the industry. We will have one committee on butter, one on cheese, one on ice cream, one on evaporated milk, etc. Each will have its chairman and when we get the group together, the dairy industry can speak as a group to the end that the prices paid for milk will be as high as is consistent with keeping production down to domestic use.

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[Excerpt from the discussion following the address:]

DR. KING: Well, let me say right off the bat that among the suggestions for production control have been the following: First, that we somehow or other take cows off the market. There have been several varieties of that: It will take about 2 million dollars to clean up all the T. B. in the United States outside of California. . . . The second was to buy cows three to four years in calf pregnant, for the reason, first, it will reduce production now; second, it will reduce production in the next five years. Third, we will have to buy culls, and with the money that we have we can make a dint. The fourth proposition is to begin to buy heifers, pregnant. I haven't heard much on that because it is forward looking and has nothing to do with the present. If we could, we would buy every cull in the United States. There is another problem that I wish we could do something with. I wish someone would suggest a way to get rid of the Bang's disease in the United States. If I knew a method, with the possibility of money, by which we could do that, I would go after it. The problems involved are so tremendously difficult that I suppose we have to abandon it. . . .

I think that the dairy industry, not now an export industry with the proper amount of preparation and self-interest, can keep itself a domestic industry without burdening the farmer with the extra heavy taxes at this time, for the taxpayer is going to be mighty tax-weary by next Congress.

Now then we are going to have to get down to what we are really going to do. We are going to ask the milk industry that the produc-

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tion be cut down. That, however, is only half of the problem; probably not half. What are you going to do with the butter folks? Is the farmer going to make home-made butter and sell it around and keep the prices down. I am not sure but what we may come to an allocation of cheese and concentrated milk. Another thing that hasn't been discussed is the control of credit. . . . If you choose between methods of that kind and let the dairy industry be a surplus industry with the disaster that it is going to meet in the long run, I am one of those who is willing to try anything once at production control. Now those are the things that are now being discussed. There is a very able committee working on it. We are right on the verge of it. We have to have production control in effect before next April. The most we can ever hope to do by practice is to stabilize production of milk through butter and cheese.

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APPENDIX E

AMENDED LICENSE FOR MILK—DETROIT, MICHIGAN, SALES AREA¹

ARTICLE I—PREAMBLE

Whereas, it is provided by Section 8 of the Agricultural Adjustment Act, as amended, as follows:

"Sec. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof.

"(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of Part 2 of this title" . . . and

Whereas, Henry A. Wallace, Secretary of Agriculture, acting under the provisions of said act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the thirty-first day of March 1934, issued a license for milk—Detroit sales area, and

Whereas, Henry A. Wallace, Secretary of Agriculture, acting under the provisions of said act, for the purposes and within the

¹ Issued by the Secretary of Agriculture, Nov. 1, 1934; effective date, Nov. 5, 1934.

limitations therein contained, and pursuant to the regulations issued thereunder, has on the thirteenth day of June 1934, issued an amendment to the license for milk—Detroit sales area, and

Whereas, the undersigned finds that the marketing, distribution and handling of milk and the products thereof, covered by this license, are in the current of interstate commerce since the portion thereof which occurs within the bounds of a single state affects and actually and potentially competes with the marketing, distribution and handling of commodities and products which occur between or among several states, and since the commodity, and the products thereof, covered by this license cannot be separated into interstate and intrastate portions, the supply and the marketing, distribution and handling thereof being inextricably commingled, so that it is impossible to regulate the interstate marketing, distribution and handling without also regulating the intrastate marketing, distribution and handling, and the failure to regulate the latter will defeat and obstruct the purposes of the act with respect to the former:

Whereas, the undersigned has determined to modify the terms and conditions of said license for milk—Detroit sales area, as amended, pursuant to Section 8 (3) of the Agricultural Adjustment Act and applicable General Regulations of the Agricultural Adjustment Administration; and

Whereas, the undersigned finds that this amended license and the terms and provisions hereof are in accordance with the provisions of Section 8 (3) of the said act and tends to effectuate the purposes of the said act; and

Whereas, the undersigned finds that the subject matter of this amended license is embraced within the scope of a hearing heretofore held on a marketing agreement pursuant to applicable General Regulations of the Agricultural Adjustment Administration;

Now, therefore, the undersigned, acting under the authority vested in him as aforesaid,

Hereby amends and modifies the terms and conditions of the said license and hereby licenses each and every distributor to engage in the business of distributing, marketing or handling milk or cream as a distributor in the Detroit sales area, subject to the terms and conditions set forth in this amended license.

ARTICLE II—DEFINITIONS

Section 1. *Definitions of Terms.* As used in this amended license, hereinafter called the "license," the following words and phrases shall be defined as follows:

1. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

2. "Secretary" means the Secretary of Agriculture of the United States.

3. "Detroit Sales Area," hereinafter called the "sales area," means the territory within the corporate limits of the cities of Detroit, Highland Park, Hamtramck, Dearborn, River Rouge, Wyandotte, Trenton, and all the balance of the County of Wayne, State of Michigan, except the townships of Sumpter, Huron, Van Buren, Romulus, Canton, Plymouth, Northville; the territory lying within the corporate limits of the cities of Pontiac and Royal Oak, the townships of Waterford, Pontiac, Troy, Bloomfield, West Bloomfield, Southfield, Royal Oak, Farmington and such other cities as may lie within the boundaries of the aforesaid townships, in the County of Oakland, State of Michigan: The territory lying within the corporate limits of the city of Mt. Clemens and the townships of Warren, Erin, Lake, Clinton, Harrison and Chesterfield and cities lying within the boundaries of the aforesaid townships in the County of McComb, State of Michigan.

4. "Person" means any individual, partnership, corporation, association or other business unit.

5. "Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk in conformity with the applicable health requirements in force and effect within the sales area for milk to be sold for consumption as whole milk in the sales area.

6. "New Producer" means (1) a producer whose milk was neither being purchased by distributors nor being distributed in the sales area within 90 days prior to the effective date of this license, or (2) a producer who has ceased to market milk pursuant to the terms and provisions of this license for a period of 45 consecutive days or more, and thereafter markets milk pursuant to the terms and provisions of this license.

7. "Distributor" means any of the following persons, (irrespec-

tive of whether any of such persons is a producer or an association of producers), wherever located or operating, whether within or without the sales area, engaged in the business of distributing, marketing, or in any manner handling, whole milk or cream, in whole or in part, for ultimate consumption in the sales area:

- (a) Who pasteurize, bottle or process milk or cream;
- (b) Who distribute milk or cream at wholesale or retail to (1) hotels, restaurants, stores or other establishments for consumption on the premises; (2) stores or other establishments for resale; and (3) consumers;
- (c) Who operate stores or other establishments selling milk or cream at retail for consumption off the premises;
- (d) Who purchase, market or handle milk or cream which is sold for resale in the sales area.

8. "Subsidiary" means any person of, or over whom or which, a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

9. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control of or over a distributor, whether by stock ownership or in any other manner.

10. "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence or other data pertaining to the business of the person in question.

11. "Market administrator" means the person designated pursuant to Article III.

12. "Delivery period" means the period from the first to, and including, the last day of each month.

13. "Established base," for each producer (including each distributor, who is also a producer), means that quantity of milk allotted to such producer in accordance with the provisions of Exhibit A, which is attached hereto and made a part hereof.

14. "Delivered base," (1) for each producer, means that quantity of milk delivered by such producer to distributors which is not in excess of the established base of such producer, and (2) for each distributor who is also a producer, means the quantity of milk produced and sold or distributed by such distributor as Class I,

Class II and Class III milk which is not in excess of the established base of such distributor.

ARTICLE III—MARKET ADMINISTRATOR

Section 1. *Designation, Removal, Bond and Liability.* The market administrator shall be designated, and shall be subject to removal at any time, by the Secretary. The market administrator, within forty-five (45) days following the date upon which he enters upon his duties, shall execute and deliver to the Secretary a bond in such amount as the Secretary may determine, with surety thereon satisfactory to the Secretary, conditioned upon the faithful performance of the duties of such market administrator. The market administrator shall not be held personally responsible in any way whatsoever to any licensee or to any other person for errors in judgment, mistakes of fact or other acts, either of commission or omission, except for acts of dishonesty, fraud or malfeasance in office.

Sec. 2. *Duties.* The market administrator shall:

1. Perform such duties as may be provided for him pursuant to this license and amendments thereto.

2. Keep such books and records as will clearly reflect the financial transactions provided for in this license, which books and records shall be subject to examination by the Secretary at any and all times.

3. Furnish such information and such verified reports as the Secretary may, from time to time, request.

4. Obtain a bond with reasonable security thereon for each employee who handles funds entrusted to the market administrator under the provisions of this license.

Sec. 3. *Rights.* The market administrator shall have the right:

1. To borrow money for the purpose of establishing an office with the necessary equipment and supplies, and for the purpose of meeting current operating expenses during not to exceed two delivery periods; which moneys shall be repaid from the funds retained by the market administrator to meet his cost of operation.

2. To incur necessary expenses, including compensation for persons employed by the market administrator for the proper conduct of his duties, and including the cost of procuring and continuing his bond.

3. To examine the books and records of the distributors and the books and records of the affiliates and subsidiaries of each distributor for the purpose of (1) verifying the reports and information furnished to the market administrator by each distributor pursuant to this license, and/or (2) obtaining the information from any distributor in the event such distributor fails to furnish reports or information as required by this license.

4. To check sampling, weighing and butterfat tests of milk made by distributors, to determine the accuracy thereof, and for the purpose of assuring proper payments to producers. In the event of a discrepancy between the weights and tests determined by the market administrator, and the weights and tests determined by the distributors, settlements shall be made by distributors upon the basis of such weights and such butterfat tests as the market administrator may in each case decide.

5. And the power, upon the specific approval of the Secretary, to institute legal proceedings in his own name, as market administrator, and to take any other steps which may be necessary, to collect any and all moneys which may become due and owing to him as such market administrator and to enforce such obligations as accrue to him as such market administrator under the terms and provisions of this license.

Sec. 4. *Compensation.* The market administrator shall be entitled to reasonable compensation, which shall be determined by the Secretary.

ARTICLE IV—CLASSIFICATION OF MILK SALES AND USES

Section 1. *Primary Sales and Uses.* Milk purchased or handled by distributors shall be classified according to its sale and use as follows:

1. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the sales area.

2. Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption in the sales area.

3. Class III milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I and Class II milk except as set forth in Section 2.

Sec. 2. *Other Sales and Uses.* Milk sold or distributed as milk or cream outside the sales area or sold to other distributors or persons whether within or without said sales area shall be classified as follows:

1. Milk sold in bulk as milk or cream by a distributor who is also a producer to a distributor operating a bottling or processing plant shall be accounted for as Class III milk by such selling distributor, and if such buying distributor uses or sells such milk for other than Class III purposes such buying distributor shall account to the market administrator for the difference between the value of such milk or cream at the Class III price and the value of such milk or cream at the Class I or Class II price according to its usage; such difference in value shall be added to the total value computed pursuant to paragraph 1, Section 1 of Article VIII.

2. Except as provided in paragraph 1 of this section, milk sold or distributed by a distributor as milk or cream (1) outside the sales area or (2) to another distributor or person, whether within or without the sales area, shall be accounted for by such selling distributor as Class I and Class II milk, respectively; *Provided*, That if such selling distributor, on or before the date fixed for filing reports pursuant to Article VI, shall furnish to the market administrator satisfactory proof that such milk or cream has been utilized for a purpose other than the sale of distribution for ultimate consumption or use as milk or cream, then, and in that event such milk or cream shall be classified in accordance with such other use.

ARTICLE V—PRICES TO DISTRIBUTORS AND CONDITIONS OF SALES

Section 1. *Prices.* Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter set forth in this license, the following prices for milk, of 3.5 per cent butterfat content, which he has purchased from producers, including new producers, delivered f. o. b. distributor's plant:

1. Class I milk—\$2.40 per hundredweight.
2. Class II milk—For each hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported by the United States Department of

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Agriculture for the delivery period during which such milk is purchased, plus 33 $\frac{1}{3}$ per cent thereof, plus 20 cents.

3. Class III milk—For each hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus 18 per cent thereof.

Sec. 2. *Adjustments in Cost of Milk to Distributors.* The prices set forth in Section 1 of this article shall be subject to adjustments in accordance with the following:

1. With respect to Class I and Class II milk received by distributors at plant locations specified below, there shall be deducted the amounts specified below for such plant locations:

Location	Transportation Adjustments per Hundredweight	Location	Transportation Adjustments per Hundredweight
No. Farmington . . .	14c	Fowlerville	20c
Cherry Hill	14c	Brown City	21c
Flat Rock	14c	Adrian	21c
Farmington	14c	Marlette	22c
Willis	15c	Clifford	23c
Newport	14c	Perry	23c
So. Lyons	15c	Vassar	24c
Washington	14c	Owesse	25c
Remee	15c	Grass Lake	21c
Steney Creek	15c	Litchfield	27c
Richmond	15c	Sandusky	24c
Peters	16c	Homer	27c
Saline	16c	Ray Center	15c
Brighton	16c	Creswell	24c
Ortonville	17c	Deckerville	27c
Maybee	16c	Raymone	22c
Memphis	17c	Stockbridge	23c
Belle River	17c	Ovid	27c
Clinton	18c	Mason	23c
Atlas	18c	Watertown	23c
Grand Blanc	18c	Battlerun	17c
Imlay City	18c	Brooklyn	21c
Capac	19c	Parma	25c
Lapeer	19c	Hillsdale	27c
Yale	20c	Almont	16c
Britton	20c		

2. Unless the prior written consent of the market administrator is obtained for some other basis of computation, Class I and Class II milk for each distributor shall be deemed to have been taken in the order above named from milk delivered to such distributor at plants within and nearest to the sales area.

3. With respect to Class I and Class II milk sold, distributed, or used outside the sales area, the market administrator may make an adjustment equal to the difference between the Class I and Class II prices specified in Article V and such prices as the market administrator may determine to be the prevailing market prices in the market where such milk or cream is sold, distributed, or used, with reasonable allowance for transportation to such markets.

Sec. 3. *Other Licenses for Milk.* If any milk is purchased from producers pursuant to the terms and conditions of this license and sold as milk for ultimate consumption in another market with respect to which a license is in effect pursuant to Section 8 (3) of the act covering such purchase from producers and such sale as milk, then, and in that event the license in effect in the area in which such milk is sold for ultimate consumption shall govern the prices and condition of such sale.

Sec. 4. *Transactions with Violators.* No distributor shall purchase milk or cream from, or process or distribute milk or cream for, or sell milk or cream to any other distributor who he has notice is violating any provision of this license.

Sec. 5. *Prior Contracts.* Any contract or agreement entered into by a distributor prior to the effective date of this license, covering the purchase, delivery and/or sale of milk and its products, shall be deemed to be superseded by the terms and conditions of this license insofar as such contract or agreement is inconsistent with any provisions of this license.

ARTICLE VI—REPORTS OF RECEIPTS AND SALES OF MILK BY DISTRIBUTORS

Section 1. On or before the fifth day after the end of each delivery period, each distributor (other than those who operate only stores or similar establishments) shall report to the market administrator in a manner prescribed by the market administrator, with respect to milk or cream received and/or produced by such distributor, during such delivery period as follows:

1. The deliveries to each plant location from producers, who are not also distributors, supplying such distributor, the total quantity of milk represented by the delivered bases of all such producers and the total quantity of milk represented by the excesses over delivered bases of all such producers, and the deliveries of new producers supplying such distributor.

2. The total quantities of milk which were sold, used or distributed by such distributor as Class I, Class II and Class III milk, respectively, including sales to other distributors.

3. The deliveries of milk made to such distributor by any other distributor, including a distributor who is also a producer.

4. The quantity of milk produced by such distributor, if any, which was sold, used or distributed by him as Class I, Class II and Class III milk, respectively.

5. Upon first receiving milk from any producer (1) the name of such producer, (2) the date on which such milk was first received, and (3) whether or not such producer is a new producer.

6. Such other information as the market administrator may request for the purpose of performing the provisions of this license.

ARTICLE VII—DISTRIBUTORS NOT MARKETING WHOLE MILK AND DISTRIBUTORS WHO ARE ALSO PRODUCERS

Section 1. *Distributors Not Marketing Whole Milk.* Any distributor who does not sell or distribute whole milk for ultimate consumption or use in the sales area:

1. Shall not sell cream to other distributors for distribution and ultimate consumption or use in the sales area at a price less than the price at which such distributor sells similar cream for distribution and ultimate consumption nearest the location where milk is processed into such cream by such distributor, plus the reasonable cost of transporting such cream to the sales area.

2. Shall not be subject to the terms and provisions of Section 1 of Article V, nor of Articles VIII, IX, X, XII or XIII; but shall submit any or all reports pursuant to Article VI upon the request of the market administrator.

Sec. 2. *Distributors Who Are Also Producers.* With respect to each distributor who is also a producer:

1. The market administrator shall, subject to the conditions set

forth in paragraph 3 of this section, exclude in the following manner all milk produced and sold by such distributor from the computations pursuant to Section 1 of Article VIII:

(a) The milk produced and sold in excess of delivered base by such distributor by deducting such excess over base from such distributor's total Class III, Class II and Class I milk, (after excluding purchases from other distributors), using all of each class of milk in the order above named before making any deduction from the succeeding class of milk.

(b) The delivered base of such distributor, subject to the provisions of paragraph 2 (b) of this section.

2. The market administrator shall, subject to the condition set forth in paragraph 3 of this section, include in the computations pursuant to Section 1 of Article VIII:

(a) The difference in value between the excess over delivered base of such distributor, multiplied by the Class III price and the total value of such excess over base apportioned among such distributor's Class III, Class II and Class I milk pursuant to paragraph 1 (a) of this section and multiplied by the Class III, Class II and Class I prices, respectively.

(b) The milk purchased by such distributors from other producers and the value thereof, computed as follows: The quantity of such milk shall be ratably apportioned among such distributor's total Class I, Class II and Class III milk after making the adjustments and deductions set forth in paragraph 1 (a) of this section, and shall multiply such adjusted quantities by the Class I, Class II and Class III prices, respectively.

3. The market administrator shall, upon prior written notice from such distributor of the exercise thereof, grant the option of having all milk produced by such distributor included in the computation made pursuant to Section 1 of Article VIII in lieu of the provisions of paragraphs 1 and 2 of this section:

4. Milk sold in bulk as milk or cream by such distributor to another distributor operating a bottling or processing plant shall be accounted for as Class III milk by such selling distributor pursuant to paragraph 1, Section 2 of Article IV.

Sec. 3. *Limitations.* No provisions in this license shall be construed to relieve any distributor who does not sell or distribute

whole milk or any distributor who is also a producer from any of the obligations of this license except as set forth in Sections 1 and 2 of this article. The provisions set forth in Section 2 of this article shall not apply to any distributor other than a person who produces milk distributed by himself as whole milk or cream.

**ARTICLE VIII—DETERMINATION AND NOTIFICATION
OF PRICES TO PRODUCERS**

Section 1. *Computations.* With respect to each delivery period, the market administrator shall:

1. Compute the total value of the milk reported by each and all distributors pursuant to Article VI on the basis of the classification and prices with adjustments as set forth in Articles IV and V, respectively, which computations shall not include the milk or the value thereof (1) as purchased by distributors from other distributors except as set forth in paragraph 1, Section 2 of Article IV, (2) as excluded from such computations under the provisions of Article VII, or (3) if classified as emergency milk pursuant to Section 3 of Article IX.

2. Compute the total quantity of milk which represents the delivered bases of producers (excluding new producers) and which is included in the computations pursuant to paragraph 1 of this section.

3. Compute the total value of the milk (including all milk delivered by new producers) which is in excess of the delivered bases determined pursuant to paragraph 2 of this section and which is included in the computations pursuant to paragraph 1 of this section, by multiplying such quantity of milk by the price per hundred pounds which is equal to $3\frac{1}{2}$ times the average wholesale price of 92 score butter in the Chicago market as reported by the United States Department of Agriculture during such delivery period.

4. Compute the total value of the quantity of milk represented by the delivered bases of producers by subtracting the value obtained in paragraph 3 of this section from the value obtained in paragraph 1 of this section.

5. Compute the total adjusted value of the milk represented by the delivered bases of producers by adding to the value obtained

in paragraph 4 of this section, the adjustments set for in Section 5 of Article IX.

6. Compute the blended price for the quantity of milk represented by the delivered bases of producers by dividing the adjusted value obtained in paragraph 5 of this section by the quantity of milk represented by the delivered bases of producers as determined in paragraph 2 of this section, which blended price shall be subject to adjustments as set forth in Section 2 of this article.

Sec. 2. *Adjustments for Reserves.* The market administrator may adjust the blended price, computed pursuant to Section 1 of this article, for the purpose of establishing and maintaining a reserve fund against (1) the failure or delay of distributors to make payments on equalization accounts pursuant to Section 2 of Article X, (2) errors and discrepancies in reports of distributors, and (3) errors and discrepancies in equalization accounts, including adjustments on delayed reports of distributors: *Provided*, That such adjustments in the blended price for any one delivery period may not, except upon the specific approval of the Secretary, exceed an amount equal to two (2) per cent of the total value of milk reported by distributors for such delivery period. Such reserve fund shall at no time contain a net amount in excess of ten (10) per cent of the value of the milk reported by distributors for an average delivery period and shall in no event be used by the market administrator to meet any costs or liabilities incurred by him under this license. If and when all or any portion of said reserve fund is not necessary to accomplish the purpose for which it was created, equitable distribution thereof shall be made by the market administrator to the producers supplying milk for distribution in the sales area.

Sec. 3. *Notification of Producer's Prices.* On or before the eighth day after the end of each delivery period, the market administrator shall notify all distributors, whose reports are included in the computations made pursuant to Section 1 of this article, of (1) the blended price computed pursuant to Section 1 of this article, as adjusted pursuant to Section 2 of this article, (2) the price to new producers and for excess over delivered bases as determined pursuant to paragraph 3 of Section 1 of this article, and (3) the Class II and the Class III prices as provided for in Section 1 of Article V.

ARTICLE IX—PAYMENTS TO PRODUCERS

Section 1. *Payments to Producers and New Producers.* Each distributor shall pay to producers and to new producers on or before the fifteenth day after the end of each delivery period for milk delivered by such producers during such delivery period, subject to adjustments as set forth in this article and deductions as set forth in Article XII, as follows:

1. The blended price for the quantity of milk delivered by each producer not in excess of such producer's delivered base;

2. The price per hundred pounds of milk which is equal to $3\frac{1}{2}$ times the average wholesale price of 92 score butter in the Chicago market as reported by the United States Department of Agriculture during such delivery period, for the quantity of milk delivered by each such producer in excess of such producer's delivered base; and

3. The price per hundred pounds of milk, which is equal to $3\frac{1}{2}$ times the average wholesale price of 92 score butter in the Chicago market as reported by the United States Department of Agriculture during such delivery period, for the total quantity of milk delivered by each new producer, which price shall apply from the date when milk is first received from such new producer to the end of the first full delivery period.

Sec. 2. *Additional Payments.* Any distributor may, with the prior approval of the market administrator, make payments to producers in addition to the payments pursuant to Section 1 of this article: *Provided*, That such additional payments are made to all such producers supplying such distributor with milk of similar quality and grade. No distributor may accept services from or render services to a producer or an association of producers from whom he is purchasing milk without making a reasonable payment or charge, as the case may be, for such services.

Sec. 3. *Emergency Milk.* During any emergency period when the normal supply of milk from producers is not sufficient to meet the Class I and Class II requirements of any distributor, such distributor may, with the prior approval of the market administrator, purchase milk for such emergency purposes from producers on terms and conditions other than those set forth in this article and in Article XII, but at prices not less than the equivalent of the prices set forth in Article V, in which event such milk shall not be

included in the computations as provided in Article VIII, but shall be reported separately to the market administrator by such distributor.

Sec. 4. *Butterfat Differentials.* Each distributor shall pay three (3) cents per hundredweight of milk for each $\frac{1}{10}$ of one per cent butterfat content above, and shall deduct a similar amount for each $\frac{1}{10}$ of one per cent butterfat content below 3.5 per cent butterfat on all milk on which prices are paid producers pursuant to Sections 1 and 2, except when the average wholesale price of butter in the Chicago market for any delivery period is 25 cents or more per pound, then, and in that event, the above differential of three (3) cents shall be four (4) cents. Fractions of $\frac{1}{2}$ or $\frac{1}{10}$ of one per cent or more shall accrue to the benefit of the producer, if below $\frac{1}{2}$ of $\frac{1}{10}$ of 1 per cent to the benefit of the distributor.

Sec. 5. *Location Adjustments in Payments to Producers.* Each distributor shall, in making payments to producers (excluding new producers) pursuant to Section 1 of this article, deduct from the price to be paid for the delivered base of any producer who delivers milk at a plant location specified in paragraph 1 of Section 2 of Article V, the adjustment specified for such plant location.

ARTICLE X—EQUALIZATION AMONG DISTRIBUTORS AS TO PAYMENTS TO PRODUCERS

Section 1. *Equalization Accounts.* The market administrator shall maintain for distributors whose reports are included in the computations pursuant to Article VIII, records and accounts which will accurately disclose for each distributor (1) a debit of the total value of milk as computed for such distributor pursuant to paragraph 1, Section 1 of Article VIII, (2) a credit of the total payments to be made by such distributor pursuant to Section 1 of Article IX, after giving effect to the adjustments pursuant to Section 5 of Article IX, and (3) the payments to be made by such distributor to the market administrator and payments to be made by the market administrator to such distributor.

Sec. 2. *Statement to Distributors and Payment of Balances.* On or before the tenth day after the end of each delivery period the market administrator shall render a statement to each distributor whose reports are included in the computations pursuant to Article

VIII, showing the debit or credit balance, as the case may be, in the equalization account of such distributor with respect to milk purchased, sold or used during such delivery period. Debit balances shall be paid to the market administrator on or before the twelfth day after the end of each delivery period. Any funds so paid to the market administrator, shall, as soon as reasonably possible, be paid out by him pro rata among the distributors having credit balances in proportion to, but only to the extent of, each such credit balance.

ARTICLE XI—PRODUCERS AND PRODUCERS' CO-OPERATIVE ASSOCIATIONS

Section 1. *Payments by Co-Operatives.* No provision in this license shall be construed as controlling or restricting any producers' co-operative association which meets the requirements of the Capper-Volstead Act and is licensed as a distributor under this license, with respect to the actual deductions or charges, dividends or premiums to be made by such association from and/or to its members: *Provided*, That no such deductions or charges may be made by any such producers' co-operative association from any of its members, to meet a current operating loss incurred by such producers' cooperative association in its processing or distribution operations unless (a) expressly and specifically authorized by any such member to make such deductions or charges for such purpose, and (b) the producers' co-operative association notifies the market administrator of the same.

Sec. 2. *Right to Check Weights and Tests.* A producers' association shall at all reasonable times have, with respect to its members, the right to check sampling, weighing and butterfat tests of milk made by distributors: *Provided*, that the market administrator has given notice that such association is qualified to perform satisfactorily the services specified in Section 2 of Article XII.

Sec. 3. *Transportation Rights.* Producers shall have the right to deliver milk to plants or platforms of distributors, using any reasonable method of transportation which they, in their discretion, may select. No distributor shall interfere with or discriminate against producers in the exercise of such right. At the request of the market administrator, each distributor shall from time to time, submit a verified report stating the actual transportation charges

on all milk delivered to him f. o. b. any and all plants, for the purpose of permitting the market administrator to review such transportation charges and to determine the reasonableness thereof.

ARTICLE XII—DEDUCTIONS FROM PAYMENTS TO PRODUCERS

Section 1. *For Market Administration.* Each distributor shall deduct $\frac{3}{4}$ cents per hundredweight from the payments to be made by him pursuant to Article IX in regard to all milk delivered to him during each delivery period by producers who are not also distributors and shall on or before the fifteenth day after the end of each such delivery period, pay such deduction to the market administrator, and each distributor who produces milk distributed by him shall make a similar payment for milk produced by him and sold during each delivery period as Class I, Class II or Class III milk. Such payments shall be retained by the market administrator in a separate account to meet his cost of operation.

Sec. 2. *For Marketing Services.* Upon the request of the market administrator each distributor shall, in addition, deduct $2\frac{1}{4}$ cents per hundredweight from the payments to be made by such distributor pursuant to Article IX in regard to all milk delivered to him during each delivery period by producers (1) for whom the following services are not currently rendered in a satisfactory manner by a producers' co-operative association; (a) market information, (b) supervision over weights and tests, and (c) to the extent that funds permit, the establishment and maintenance of a reserve fund for protection against the failure of distributors to make payments for milk purchased; and (2) from whom a substantially similar charge or deduction is not being paid by distributors to a producers' co-operative association for such purposes. Such deductions shall be paid to the market administrator on or before the fifteenth day after the end of each delivery period and shall be expended by him for the purpose of securing services similar to those above named for producers from whose payments such deductions are made, except that with the approval of the Secretary, the market administrator may notify any producer when the distributor to whom such producer is selling milk is in violation of any of the terms and provisions of this license, and no producer shall be entitled to protection

against the failure of such distributor to make payments for milk purchased from such producer thereafter and until otherwise notified by the market administrator. All deductions shall be kept in a separate account by the market administrator and shall in no event be used by the market administrator to meet any costs or liabilities incurred by him under this license, except as set forth in this section.

Sec. 3. *Agents of Market Administrator.* The market administrator may, in his discretion, employ the facilities and services of any agent or agents for the purpose of securing to producers the aforementioned benefits, if such benefits may be efficiently and economically secured thereby. The market administrator shall pay over such funds to such agent or agents, if he determines to do so, only upon the consent of such agent or agents to (1) keep its or their books and records in a manner satisfactory to the market administrator; (2) permit the market administrator to examine its or their books and records, and to furnish the market administrator such verified reports or other information as the market administrator may from time to time request; and (3) disburse such funds in the manner above provided.

Sec. 4. *Waiver of Deductions.* The market administrator, in his discretion, may at any time waive the foregoing deductions or distribute any balance arising from such deductions, or any part thereof, for any delivery period (in which event the deductions so waived shall not be made by the distributors from payments to producers); the distribution of any such balances shall be equitable (1) among all producers with respect to the amounts paid to the market administrator pursuant to Section 1 of this article, and (2) among all producers from whom such deductions have been made pursuant to Section 2 of this article.

ARTICLE XIII—DISTRIBUTOR'S FINANCIAL RESPONSIBILITY

Section 1. *Bond.* Each distributor who purchases milk from producers and sells any part of such milk for distribution as whole milk for consumption in the sales area shall, within thirty days after the receipt of a notice to that effect from the market administrator, furnish to the market administrator a bond with good and sufficient surety thereon, satisfactory to the market administrator

(in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the market administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in this license. Any distributor who commences to do business after the effective date of this license shall, as a condition precedent to engaging in such business, furnish to the market administrator a bond in conformity with the foregoing provision.

Sec. 2. *Waiver of Bond.* The market administrator may (1) if satisfied from the investigation of the financial condition of a distributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (2), if pursuant to a state statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirement of such bond as to such distributor. Such distributor may, upon a change in such circumstances, be required by the market administrator to comply with the foregoing requirement.

Sec. 3. *Periodic Deposits.* Each distributor who is unable to meet the requirements of the foregoing provisions, shall make periodic deposits with the market administrator at such times, in such amounts, and in such manner as the market administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligations as provided in this license.

ARTICLE XIV—MILK INDUSTRY BOARD

Section 1. *Establishment.* The Secretary may, in his discretion, at any time establish a Milk Industry Board, which shall have representation of producers, distributors, and the public. In establishing the Milk Industry Board, the Secretary will give due consideration to the recommendations and nominations by various groups of producers, distributors and the consuming public.

Sec. 2. *Duties and Powers.* The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it, in order to effectuate the provisions and purposes of this license.

Sec. 3. *Expenses.* The Secretary may further, in his discretion, authorize and direct the market administrator to pay over to the Milk Industry Board for the purpose of meeting its general expenses

a portion of the moneys paid to the market administrator for his cost of operation; *Provided*, That such portion shall in no event exceed $\frac{1}{4}$ cent per hundred pounds of milk for which such payment is made.

ARTICLE XV—GENERAL PROVISIONS

Section 1. *Books and Records.* The distributors and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all the financial transactions of their respective businesses and the financial condition thereof.

Sec. 2. *Reports.* The distributors shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, in a manner prescribed by him and/or in accordance with forms of reports to be supplied by him, for the purposes of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this license and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the act and the purpose of this license are being effectuated; such reports to be verified under oath. The Secretary's determination as to the necessity of and the justification for the making of any such reports, and the information called for thereby, shall be final and conclusive.

Sec. 3. *Examination of Books and Records.* For the same purposes as set forth in Section 2 of this article and/or to enable the Secretary to verify information furnished him, all the books and records of each distributor and the books and records of the affiliates and subsidiaries of each distributor, shall, during the usual hours of business, be subject to examination by the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive.

Sec. 4. *Confidential Information.* All information furnished the Secretary or the market administrator pursuant to the terms of this license shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

Sec. 5. *Agents.* The Secretary may by designation in writing, name any person or persons, including officers or employees of the government, or bureaus or divisions of the Department of Agricul-

ture, to act as his agents or agencies in connection with any of the provisions of this license, and he may authorize any such agent or agency to designate or appoint persons, including officers or employees of the Department of Agriculture, to exercise or perform any or all of the powers and functions delegated to them as may be deemed necessary or advisable to accomplish the proper execution or performance of such powers and functions.

Sec. 6. *Separability.* If the applicability of any provision of this license to any person, circumstance or thing is held invalid, the applicability thereof to any other person, circumstance or thing, shall not be affected thereby. If any provision of this license is declared invalid, the validity of the remainder of this license shall not be affected thereby.

Sec. 7. *Derogation.* Nothing contained in this license is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (1) to exercise any powers granted by the act or otherwise, and/or (2) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

Sec. 8. *Termination.* In the event this license is terminated or amended by the Secretary, any and all obligations which shall have arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this license, and any violation of this license which may have occurred prior to such termination or amendment, shall be deemed not to be affected, waived or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to this license.

Sec. 9. *Period of Notice.* The undersigned hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this license, which is hereinafter provided, is reasonable under the circumstances.

In witness whereof, H. A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, and pursuant to the applicable General Regulations of the Agricultural Adjustment Administration, does hereby execute in duplicate and issue this license in the City of Washington, Dis-

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trict of Columbia, on this first day of November, 1934, and pursuant to the provisions hereof, declares this license to be effective on and after 12:01 a. m., eastern standard time, November 5, 1934.

[Signed] H. A. WALLACE,
Secretary of Agriculture.

EXHIBIT A

ALLOTMENT AND REGULATION OF BASES

Section 1. *Allotment of Bases.* For the purposes of this license, each producer shall be allotted a base as follows:

1. In the case of producers (excepting new producers) who are members of the Michigan Milk Producers' Association, hereinafter called the "association," the bases recorded in the files and records of the association shall be the bases of such producers. The market administrator shall have access to such files and records.

2. In the case of producers who are not members of the association, bases shall be allotted by the market administrator, which bases shall be equitable as compared with the bases established pursuant to paragraph 1 of this section.

3. In the case of distributors, who are also producers, bases shall be allotted by the market administrator, which bases shall be equitable as compared with all other bases allotted pursuant to this section.

4. In the case of new producers, including distributors who are also new producers, bases shall be allotted by the market administrator which bases shall be equitable with all other bases allotted to producers pursuant to this section.

Sec. 2. *Revision of Bases.* The market administrator may make such revisions in the bases of any and all producers as he may, from time to time, deem necessary or advisable, to the end that such bases may be equitable as among producers and that the total of all established bases may, so far as practical, be equal to the total quantity of milk sold or used by distributors as Class I and Class II milk.

Sec. 3. *Announcement of Bases.* When bases are established for producers, pursuant to Sections 1 and 2 of this article, the market administrator shall notify each distributor of the bases of producers who are delivering milk to each such distributor.

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Sec. 4. *Tenure and Transfer of Bases.* The following rules shall govern the tenure and transfer by producers of all bases allotted pursuant to this exhibit:

1. Any producer who voluntarily ceases to market milk pursuant to the terms and provisions of this license for a period of more than forty-five (45) consecutive days shall forfeit his base. In the event that he thereafter commences to market milk pursuant to the terms and provisions of this license, he shall be treated for the purpose of these rules as if he were a new producer.

2. Any producer may relinquish his base at any time. In the event, thereafter, such producer requests the market administrator to allot him a base, he shall be treated for the purpose of these rules as if he were a new producer.

3. Any producer whose average delivery of milk during the months of July, August, September and October is less than eighty-five (85) per cent of his base will thereby establish a new base equal to such average delivery.

4. A base may be transferred by the market administrator from a producer to a person who has no base, upon the transfer of such producer's entire herd to such person.

5. A producer with a base, whether landlord or tenant, may retain his base when moving his entire herd from one farm to another farm.

6. A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant, if the landlord owns the entire herd. Likewise, the tenant who rents on shares is entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by tenant and landlord, the base shall be divided between the joint owners according to the ownership of the cattle if and when such joint owners terminate the tenant-landlord relationship.

APPENDIX F

OTHER STATE MILK CONTROL ACTS ¹

Rhode Island: Board of five, consisting of two existing officials *ex officio*, and one representative each of the producers, the dealers, and the consumers, at annual salaries of \$500. Same provision as New York for milk produced outside of the state. Special provision requiring all persons manufacturing cream for sale in the state to secure a permit. Two-year period.

Massachusetts: Independent board of three "citizens of the commonwealth," on a per diem salary when in session, who may employ a full-time "administrator," who may be one of the board members. Special provision for prescribing "market production zones" for each market, boundaries being determined by local boards of health through their system of permits to producers. (This arrangement suggests the Ohio act.) The supply must be obtained "at the shortest practical distance and/or in the shortest reasonable period of time to meet the consumer demand of such market for milk." The board may grant dealers permission to secure milk from outside this zone in case of shortage. Exemption of dealers or producer-distributors handling less than 50 quarts if the board concludes this will not "adversely affect market conditions." Fixing of resale prices only on petition of 25 per cent of the Massachusetts producers in a market zone. Producer prices fixed according to zones. Special provision against selling milk at less than cost plus cost of distribution, producer-distributors to figure cost of milk at producer prices fixed by board. (This provision was derived from NRA codes.) Out-of-state milk declared subject to state control under police power. Two-year period.

Washington: An adaptation of the Agricultural Adjustment Act designed to fit in with and supplement it, declaring milk and seven other commodities as "basic," but providing for marketing agreements only and nothing specifically in the nature of quotas or production control. Administration by the "Director of Agricul-

¹ The material in this appendix is an elaboration of Chapter XI, in which the general discussion of state milk control acts is given.

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ture," whose rulings are subject to a "Board of Review" consisting of the Secretary of State, the Director of Conservation and Development, and the Director of Agricultural Extension. The national marketing agreements are to be interpreted also as state agreements so far as intrastate produce is concerned. Dealers and processors may be refused licenses if the markets are "amply supplied" or if the effect will be to raise prices to consumers or lower prices to producers.

Virginia: An independent "Milk Commission" of three, two of whom are producers of milk and not engaged in distribution. Board defines milksheds, but all former shippers may continue to ship. Each market to have a local board, two representing producers, two representing distributors, and one the consumers, to be named by the Milk Commission. If the co-operative handles half of the milk in any market, it may name both producer representatives; otherwise only one. If the producer-distributors furnish half, the Milk Commission shall determine the division of representatives. Expenses of local boards to be paid by assessments on milk handled. Powers of local boards to be designated by the Milk Commission. Hearings to be held in each market before the power of the commission is exercised or denied. Legislature or Governor to terminate board at end of emergency.

APPENDIX G

EXCERPTS FROM 1935 AMENDMENTS TO THE AGRICULTURAL ADJUSTMENT ACT¹

(3) Subject to the provisions of Sub-section (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to Sub-section (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(a) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(b) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(c) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

ORDERS

Sec. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in Sub-section (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only

¹The text of the amendments is from Conference Report No. 1757 of the committees of the Senate and House, printed Aug. 12, 1935.

to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: milk, fruits (including pecans and walnuts but not including apples and not including fruits other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soy beans, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in Sub-section (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in Sub-section (7)) no others:

(A) Classifying milk in accordance with the form in which, or the purpose for which it is used and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at

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which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their production of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this Sub-section (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for con-

consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this Sub-section (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a co-operative marketing association, qualified as provided in paragraph (F) of this Sub-section (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefore from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this Sub-section (5) is intended or shall be construed to prevent a co-operative marketing association qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this Sub-section (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

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TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in Sub-section (2) orders shall contain one or more of the following terms and conditions:

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(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (B) shall be deemed to be acting in an official capacity, within the meaning of Section 10(g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in Sub-sections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in Sub-section (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding co-operative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the produc-

tion or marketing area defined in such order have signed a marketing agreement, entered into pursuant to Section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order except that as to citrus fruits produced in an area producing what is known as California citrus fruits no order issued pursuant to this Sub-section (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this sub-section shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding co-operative associations or producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except

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that as to citrus fruits produced in an area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding co-operative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in an area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of

such commodity sold within the marketing area specified in such marketing agreement or order.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

CO-OPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any co-operative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such co-operative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under Sub-section (9) of this section shall be applicable to any person who sells agricultural commodities

or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this sub-section, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly, or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of Section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with refer-

ence to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

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Sec. 39. Nothing contained in this act shall (a) invalidate any marketing agreement or license in existence on the date of the enactment hereof, or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to Section 8(1) of the Agricultural Adjustment Act prior to the enactment of this act, or subsequent to the enactment of this act in connection with a program initiated under such Section 8(1) prior to the enactment of this act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act.

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