EVOLUTION OF PUBLIC REGULATION OF THE MARKET MILK INDUSTRY IN OREGON

by

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FINDINGS

The fluid milk industry has developed in recent years from a simple system of production for family use and sale within the community to a complicated industry in which milk is shipped long distances and the milk from many herds is mixed together and divided among many customers.

This change in the marketing system occasioned by the change from a rural to an urban economy brought into existence many new problems, the most important of which was that of milk sanitation. As the industry took on its new form, the opportunities for adulteration, dilution and spoilage increased greatly. The danger of the spread of infectious diseases through milk also increased greatly.

Scientists who recognized the danger of epidemics of milk-borne disease received the support of public-minded individuals in the education of the public to demand cleaner milk. Educational campaigns have come at irregular intervals such as occurred in 1909 and in 1929 in Portland.

Public regulation of the market milk industry which has resulted from the pure milk campaigns may be divided into two types: (a) regulation of sanitary conditions designed to improve the safety of the milk reaching the consumer, and (b) regulation of economic conditions within the industry designed to make economically possible the development of and the continuance of a supply of milk that will meet given sanitary standards. Sanitary regulations have been imposed through state legislation and through municipal ordinances. Economic regulations have been imposed on the industry by the state in order to facilitate the adjustments made necessary by the changes in sanitary standards.

The first state law regulating sanitary conditions in the production of dairy products was passed in 1885. An act passed in 1905 distinguished between milk for fluid consumption and milk to be manufactured into cheese or butter. These sanitary regulations that have evolved since 1885 in various markets have changed completely the character of demand for milk. Sanitary requirements for the production and handling of milk for the fluid trade have been much more rigid than for milk.
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ACKNOWLEDGMENTS

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The author is heavily indebted to Dr. D. B. DeLoach, Associate Economist of the Oregon Agricultural Experiment Station, for his assistance and direction in this project, and to other staff members of the School of Agriculture, Oregon State College, for their criticisms and suggestions.
intended for manufacturing purposes. This has been due primarily to a public demand for a higher standard of cleanliness in milk for fresh consumption than in milk used for manufacturing butter, cheese and other dairy products.

The dairymen adjacent to Portland or to other towns of the state produce far more milk than is consumed in the fluid form. This excess is manufactured into ice cream, butter, cheese and condensed milk. The supply of fluid milk for human consumption in each of these towns would be far in excess of the normal demand were it not for the fact that sanitary regulations require the producer of fluid milk to make investments in buildings and equipment that are not required of the producer of milk for factory uses. The producer of fluid milk will not make the additional investment required to produce milk for the bottle and can trade unless he expects to receive a price that is higher than for milk for manufacturing purposes.

The premium prices paid for production of the higher quality milk have caused producers to attempt to keep their minimum production high enough to meet the maximum demands of the bottle and can trade. As a result, the supply of acceptable milk has usually exceeded demand. This oversupply, called a "surplus," has been largest during periods of peak production or during periods when the spread in price between market and factory milk more than covers the difference in cost of production. To the extent that market milk producers must sell their product in manufacturing channels, the lower unit price received for their surplus milk lowers the average unit price received for all their milk.

The supply of fluid milk produced under the sanitary condition prescribed by law may easily fall short of the market demand. Health officers charged with enforcement of sanitary regulations have had to choose between: (a) strict enforcement of regulations which in many cases would have forced out a large enough number of producers to cause the supply of qualified milk to fall below the volume demanded, or (b) a degree of enforcement which would permit sufficient milk to reach the market to supply the maximum demand. The latter condition has generally prevailed. When standards were relaxed to prevent a shortage of volume of milk reaching consumers, dairymen who had made the investment required by law found it necessary to meet the competition of dairymen who had not made such investments.

The economic adjustments made necessary by changes in sanitary standards have been made more difficult by the general depression in agricultural prices, by improved roads that have permitted larger numbers of producers to compete in given markets, or by any other conditions that have tended to cause a large number of producers either to shift into or out of the market milk business.

Producers' bargaining associations were organized to eliminate excessive competition among the members of the producing group. When the producers' organizations became sufficiently strong to bargain with distributors to whom the milk was sold, immediate efforts were made by the organizations to obtain price increases. To enforce their price demands, the producers in the Portland and Salem markets instituted the milk strike of 1931 which resulted in a substantial part of the available supply of milk being kept from the markets. Agreements were made between the producers and distributors to settle the 1931 strike, but a further lowering of the general level of agricultural prices in the midst of a severe economic depression.
depression resulted in lower producer milk prices and broken contracts, all of which tended to cause further turmoil in the fluid milk industry. Producing groups that failed to accomplish an economic stabilization of the industry through their own efforts appealed to the Oregon legislature for aid in relieving their economic distress. These appeals led to passage of the Oregon Milk Control Act of 1933.

The Milk Control Act made it possible to guarantee a price and an outlet to the producers who produced milk under the regulations prescribed by the Milk Control Board. Since some producers were also distributors and some were not, the act was designed to regulate all producers and handlers of fluid milk. In order to make price maintenance possible, the law permits the regulation of the supply. In order to prevent a shortage at any time, the administrative regulations of the Board provide for a normal surplus, large enough that the supply should never be less than the demand. Under the Act, it is now the administrative responsibility of the Board to guarantee an adequate supply of milk of proper quality to meet all demands in the bottle and can trade. This responsibility has been met by resorting to a policy of (1) establishing a minimum price on butterfat; (2) licensing producers and handlers; and (3) allocating to producers' market quotas or rights that are subject to revocation if such quotas are not delivered.

INTRODUCTION

Milk is recognized as one of the oldest of human foods and the milk industry has grown more complicated and more specialized with increasing age. Production of market milk is now only one of many branches of the dairy industry, but specialization has not developed as yet to a degree that prohibits milk producers shifting from one branch of the industry to another.

The market milk industry, as we know it, has arisen with the change from a rural to an urban economy. At one time a herd of cows was kept in the village and each family drew its share of the milk to be used for fresh consumption or for making cheese or butter. Today fresh milk supplies may be transported several hundred miles, and butter, cheese and other manufactured milk products, half way around the world.

Milk distribution, like water supply and sewage disposal, has become a problem for municipal health officers. Health problems have developed as a result of a complex system of milk distribution. The time required in marketing the product increases the danger of contamination and spoilage. Modern bacteriologists have shown us the possibility of epidemics of milk-borne disease. Under our present system of distribution, the milk from one cow may be mixed with the milk of hundreds of other cows and so contaminate the milk supply for thousands of people.

This is a report on a study of the evolution of the market milk industry in Oregon; the economic problems resulting; the efforts of the industry to solve these problems through collective bargaining; and the efforts of the state and municipal governments to solve them through economic legislation. Data have been gathered from numerous sources. Records of public and private institutions and interviews with men familiar with various phases of the dairy industry have been the principal sources. Much of the study has been devoted to the Portland market, because it is
the largest municipal market in the state, and its milk problems affect more people. Emphasis is placed on producer problems, because that group appears to have initiated the economic legislation which has regulated the industry since 1933.

PROBLEMS OF THE MARKET MILK INDUSTRY

Supply

An adequate supply of milk has come to mean more than volume. Medical research has established the value of milk as a food, but it has also shown that milk can be a means of spreading disease. Under their police powers, most municipalities now regulate the purity of the milk produced for distribution to their citizens and today the mere fact that a man keeps cows does not make his business a part of the market milk industry. He must be able to produce milk which contains less than a stated number of bacteria per unit. It must pass tests for taste, odor, and butter-fat content. Before he is permitted to sell this milk, the dairyman must invest in buildings and equipment that meet given standards of construction and sanitation, and must handle his milk in conformance with city laws. His operations are subjected to rigid supervision; therefore, his investment and cost of production are greater than if he were producing milk to be used in the manufacturing channels.

Milk has become so important as a basic food that complete or even partial stoppage of a city's supply of this wholesome product would cause serious consequences. If we were only interested in volume of milk, the action of supply and demand might do a satisfactory job of regulation. This is complicated, however, by requiring milk to be of certain sanitary quality. This sanitary standard can be reached only through the investment of substantial sums in buildings and equipment. Such investments require time and will not be made unless the dairyman has some confidence in his ability to continue in the business of producing whole milk for the bottle and can trade.

Fluctuations in the supply of market milk result from three principal causes: seasonal changes in feed supplies, the change of supply and demand relationships, and variations in quality of the milk. 1/

Seasonal variations in pasture conditions have a marked influence in the volume of milk flowing to the market in given periods each year. For example, records of the Oregon Milk Control Board show that production of Grade A and B milk in pounds of butterfat for the Portland market in 1939 varied from a high of 516,273 pounds in May to a low of 29,766 pounds in September. 2/

Volume of production is influenced by the price paid for market milk as related to price for milk going into manufactured dairy products. The investment in buildings and equipment must be considered, but if the price of factory milk is extremely low or the price of market milk is high in relation to other agricultural prices, there is a tendency on the part of factory milk producers to shift to market

1/ This section discusses the problems of a market regulated by sanitary but not economic control measures. Some of the examples, however, have been taken from a closed market because comparable data are not available for an open market.

2/ Annual report of the Oregon Milk Control Board 1939-40.
milk. This shift produces an oversupply, to the detriment of those producers who have been maintaining higher standards of sanitation. The reverse is true and cities are faced with a shortage of inspected milk if the difference in price between market and factory milk does not cover the difference in production costs over a long period of time, and market milk dairymen let their production drop, or change to selling factory milk.

Quality of milk also fluctuates during the year principally because of changes in temperature. City distributors are sometimes faced with a shortage of milk that will pass inspection for purity, even though total volume of milk might be more than sufficient to supply demand. The milk ordinance now in force in Portland limits bacteria count in B grade milk to an average of 100,000 per cc. for three consecutive samples. Six per cent of the B grade milk shipped to the Portland market was degraded—ruled unfit for fresh consumption—on September 15, 1940. Until producers of that milk corrected the reasons for its condition and were able to lower their average bacteria count to below 100,000 per cc., they were forced to sell their output for factory purposes, which returned a lower price per unit than the bottle and can trade. With that portion of the supply suspended, several distributors found it difficult to obtain enough B grade milk from their regular producers to supply their daily orders.1/

Demand

In any market there is normally an excess of supply over demand. This is commonly called surplus milk. This surplus—all of the market milk supply which is not used in the bottle and can trade—is usually considered to consist of two parts: (1) the amount of milk necessary to cover short term fluctuations in demand occasioned by holidays and changes in weather conditions, and (2) the increased supply resulting from greater production in the spring or from a material increase in the number of milk cows or average production per cow.

Of course the producers could hold down their maximum production to the point of minimum demand, thus permitting the development of shortages rather than surpluses. Producers, however, have considered it better business to avoid shortages and to try to keep the minimum production equal to the maximum demand. It is also probable that consumer reaction to a shortage would be very adverse, especially since the entire trade area is known to produce far more milk than is needed in the bottle and can trade.

Surplus milk must be sold for factory use. Since the factory price is usually lower than that paid by the bottle and can trade, the producer's average price per pound butterfat depends upon the percentage of his product which he is able to sell at the higher price. When the amount of surplus exceeds that required to cover fluctuations in demand, returns to producers may be forced low enough to threaten the continued operation as fluid milk producers of dairymen who have built up their investment in the market milk business.

1/ Data from Mr. Thomas Olhsen, Accountant, Oregon Milk Control Board.
Trade Practices That Tend to Endanger Quality

Competition among milk distributors takes much the same form as in other industries. Because of relative inelasticity of demand for milk and the fact that quality must be maintained to protect public health, the effects of competition appear to be contrary to the public interest. New distributors, or those attempting to increase business, lower prices to the consumer in various ways such as direct price cutting, giving rebates and discounts, selling milk of higher butterfat content or by giving free use of advertising or refrigeration facilities. When these practices are prevalent in a market, the price to the producer is lowered, and, even though consumers are paying less for their milk, they may be getting much poorer quality than they received with higher prices. Even though regulations are set up and inspections made, quality can not be maintained when the price does not cover the cost of maintaining this quality.

MARKET ADJUSTMENTS RESULT FROM SANITARY REGULATION

Early Sanitary Regulation of the Dairy Industry

As indirect distribution of city milk increased, those interested in public health became alarmed at the possibilities of epidemics of milk-borne disease. Through educational campaigns, the public was taught to demand safe milk, and state and municipal legislation to regulate sanitation of the market milk industry resulted. With these regulations in force, cities have been faced with periodic shortages of milk. These conditions are attributable in part to the added cost of production forced upon the industry by higher sanitary standards.

Legal supervision of the dairy industry in Oregon began in 1885 when the state legislature passed "An Act to Prevent Deception in Sale of Dairy Products." This act prohibited the sale of "unclean, unhealthy, adulterated, or unwholesome milk or any article of food made from the same or of cream made from the same." It also declared it unlawful to keep cows "in crowded or unhealthy condition or to feed the cows on food that produces impure, diseased, or unwholesome milk." The Office of Oregon State Dairy Commissioner, later changed to Dairy and Food commissioner, was created to enforce the act.

Oregon began to differentiate milk produced for fluid consumption from milk produced for factory purposes by 1905. At that time a law was enacted requiring that persons maintaining cows for the purpose of selling milk for fluid consumption in cities of 10,000 or more must apply annually for a certificate of inspection. This certificate or license was revocable at any time "when said dairy is found not to be in proper condition as to healthfulness and proper sanitary regulations of the stables, buildings, or grounds in which said cows are kept."

Inspections throughout the state were directed at all dairies, regardless of the use to be made of the milk, but enforcement was limited by lack of personnel. Conceptions of sanitation were very different from our current ideas. Milk was the product that each individual producer chose to make it or permitted it to become. The following statement illustrates the conditions existing in Portland, and the movement which developed to correct them:

1/ Laws of Oregon 1885.
"The city of Portland adopted a milk ordinance and began a limited inspection service in 1909. Previous to that time, the only inspection afforded was that of the office of the State Dairy and Food Commissioner. The dairy business at that time was a flourishing industry from an economic standpoint, but modern equipment such as sterilizers, bottling machines, small-top milk pails, and the like, were not used by any person handling milk for the Portland market.

"Recognizing the need for a more rigid and thorough inspection, a group of people inaugurated what is sometimes designated the Milk Campaign. A dairy inspector was appointed and shortly afterwards, a laboratory established with a chemist in charge. The findings of the laboratory during the first year unmasked a deplorable condition. About seventy-five per cent of the city's milk supply was shown to be either watered or skimmed, or both, not to mention added coloring and preservatives or contamination by filth. During the years 1910, 1911, and 1912, the inspection division directed its attention toward the detection of adulterated milk and the eradication of tuberculosis from dairy herds. Milk adulterators were promptly prosecuted under the provisions of the city ordinance."

Quality of the milk was so poor that sediment tests and lactometer readings were used to eliminate the unsatisfactory shipments. Dirty milk was common, as mentioned above; hair, manure, dirt, twigs, leaves and even mice were frequently found in the milk when it reached city distributing plants.

The "Pure Milk Campaign" inaugurated in Portland in 1909 had four objectives:

1. To induce dairymen to produce milk free from dirt and disease.
2. To get a law embodying the regulations desired.
3. To obtain milk inspection.
4. To create a public demand for clean milk.

The influence of this campaign spread until, in the words of Marshall Dana, now Associate Editor of the Journal, "the whole campaign grew like a ripple from a stone in the water, eventually taking in the whole state." Mr. Dana was one of the active campaigners.

The whole program met with organized opposition. Producers did not understand the true objectives and were abusive. To check the growing importance of the City Bureau of Health and loss of prestige by the state agency, the State Dairy and Food Commission discredited the whole campaign through the columns of another newspaper.

1/ "The Part of Milk Contests in Improving the Milk Supply of Portland, Oregon," by E. C. Callaway, Chemist, Portland Bureau of Health and P. S. Lucas, Assistant Professor of Dairy Manufacturing, Oregon Agricultural College, Station Bulletin 156, Oregon Agricultural College Experiment Station, December 1918.

Dr. Mack, chief of the newly established Bureau, spent the greater part of his time in the field helping farmers with T.B. testing and giving pointers on production of healthful milk. Responsibility for quality of the milk reaching the city was left to the chemist. 1/ Pasteurization was just coming into use, and much difficulty was experienced in increasing its adoption, even among those working for the improvement of the milk.

A determined effort was made to prevent the sale of milk which did not meet the requirements specified under a new ordinance adopted in Portland in 1913. Between 1915 and 1918, attention was directed toward the farms where the milk was produced, with a resulting improvement in milk supply. Boilers, coolers, sterilizers and other equipment were installed by farmers and two men were put on full-time farm inspection.

**Early Efforts to Organize Dairymen**

Economic problems developed rapidly as dairymen in the market milk industry specialized their production to meet the increasing responsibilities and expenses of supplying safe milk. The gradual development of hard surfaced roads radiating from Portland greatly widened the territory from which that city could obtain its fresh milk supply and gave dairymen many miles from the city an opportunity to compete in that market. During spring and summer seasons of peak production, the presence of large surpluses demoralized the market to the detriment of the dairymen who were supplying milk throughout the year.

A group of these dairymen determined to pool their interests and stabilize the price of milk. They organized the Oregon Dairymen's League in 1917 to act as a bargaining association in the sale of their product. The League was reorganized in 1930 and renamed the Oregon Dairymen's Cooperative League. It eventually became a state-wide organization, handling milk for manufacturing as well as the bottle and can trade. A subsidiary corporation, the Oregon Dairymen's By-Products Corporation, was formed to operate the physical facilities.

The Portland metropolitan market presented a problem separate from the other areas served. Market milk produced by League members was sold through the By-Products Corporation to Portland distributors for the bottle and can trade. Surplus was manufactured into butter and cheese in a plant operated by the Corporation. The League had under contract more than 2,000 dairymen supplying milk to Portland, furnishing 70 per cent of the milk supply within this Portland fresh milkshed.2/ Dairymen producing this milk were spread over a wide territory, but in its attempt to control the supply the League was forced to include them all in the fresh milk zone.

During the flush season of the spring and early summer months, a large surplus of milk produced by League and non-league members existed in the Portland milkshed. Distributors chose to purchase as much of their needs as possible from non-league members, thereby forcing the League to sell the major part of its members' product to the manufacturing trade. Low butter and cheese prices forced

1/ Ibid.

2/ Opinion of John McCourt, Judge, the Circuit Court of the State of Oregon for Multnomah County. Oregon Dairymen's Cooperative League vs. Portland Damascus Milk Co., et al defendants.
the League to pay back to its members a lower price per pound of butterfat than was received by non-members who were able to sell all of their product for use in the bottle and can trade.

When the League was formed, dairymen in the Portland fresh milk zone were receiving as low as $1.35 per cwt. for their milk; within a comparatively short time after its formation, prices had been stabilized, and League members were receiving $3.00 per cwt. The League succeeded in stabilizing the price, but non-league members reaped the benefits because distributors chose to purchase the major part of their bottle and can requirements from the unorganized producers. The distributors' buying policy resulted in a complete breakdown of the producers' Organization and the final dissolution of the group in 1922. 1/

THE PORTLAND MARKET - 1925-1926

In the spring of 1926, numerous requests came from dairymen to county agents, to the Portland Chamber of Commerce, and to the Agricultural Experiment Station, for information that would be helpful in a solution of the problems in the Portland metropolitan milkshed. A survey to obtain this information was made by N. C. Jamison and P. M. Brandt of Oregon State College and D. L. James of the Bureau of Agricultural Economics, United States Department of Agriculture.2/ The report of this survey shows that conditions in the Portland district at that time were unsatisfactory to producers, distributors and consumers of fresh milk.

Distribution

The 1926 report by the Experiment Station shows that milk was distributed in Portland by 26 distributors who purchased milk from farmers, pasteurized and distributed it, and by 142 producer-distributors. 2/ It was estimated that 5 of the larger distributing plants handled approximately 51%, 21 smaller distributing plants handled approximately 19% and the remaining 30% of the market milk demand was cared for by the large group of producer-distributors. Approximately 87% of the milk sold by distributors was sold at wholesale prices; 79% of the milk bottled by the 5 larger distributing plants was wholesaled to retail grocery stores.

1/ The low pool pay-outs in the Portland zone with resulting loss of members was considered by those involved to be one of the major problems causing the downfall of the organization. In less than four months an organization was built up and had under contract, dairy products valued at $5,000,000 annually. League business attained a maximum of $3,000,000 per year and among its physical equipment had plants which had been purchased at wartime prices for approximately $450,000, in many instances financed by issuance of stock.


"Oregon Dairymen’s By-Products Corporation," Hoard's Dairyman 61:172, February 18, 1921.


3/ Producers who distributed their own milk to the bottle and can trade.
A second problem was the seasonal variation in supply—the same problem that contributed to the downfall of the Dairymen's League several years earlier. Supply from regular shippers who operated under sanitary standards fluctuated from a large market surplus in the spring to an actual deficit in August and September (Chart I). In order to have a sufficient volume to supply their actual needs, the plants found it necessary to use milk from condenseries and cheese factories during the periods of extreme shortage. The amount of uninspected milk used by three large distributors is shown by the excess of sales over "receipts from producers" in Chart I. Apparently these firms were handling some C grade milk in their plants for manufacturing purposes which would have made a diversion of this milk into the bottle and can trade an easy matter. The factory milk was not produced for the fresh milk trade; consequently little or no sanitary control was exercised over the farms from which it was obtained. The City officials tried to maintain a supply of inspected milk, but with no control over prices and no other method of securing additional supplies of inspected milk during seasons of low production, those charged with administration of the milk ordinance were forced to permit use of the uninspected supply in order to prevent a milk shortage. Bacterial counts made of the raw milk delivered to the principal Portland pasteurizing plants in September 1925 showed the average count to be 2,600,000 per cc. Under the ordinance now in effect, the maximum average count permitted is 100,000 per cc.

Price cutting among the large and increasing number of producer-distributors disturbed the stability of the retail market. The most disturbing element was the individual just entering the field who in order to establish himself or because of his ignorance of costs sold at a lower price than his competitor. When once established, he gradually increased his price.

The high mortality among producer-distributor businesses is shown in Table 1, which is taken from the 1925 report. Those who stayed in the market had a larger volume of business than the average of all producer-distributors, and they continued to increase their production, which might be expected to result in increased efficiency.

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1/ Present sanitary regulations prohibit handling of C grade milk and market milk in the same plant.
Chart I

RECEIPTS AND SALES OF MILK BY MONTHS IN THREE OF PORTLAND’S LARGER PLANTS

Monthly Price is also Shown.

Taken from A Study of the Production and Marketing of Fluid Milk in Portland
N. C. Jamison, P. M. Brandt and D. L. James, 1926
Table 1. Producer-distributor situation as revealed by the records of 1915-1920-1925

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<th>Years Compared</th>
<th>1915</th>
<th>1920</th>
<th>1925</th>
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<tr>
<td>No. producer-distributors licensed</td>
<td>197</td>
<td>128</td>
<td>142</td>
</tr>
<tr>
<td>Daily sales in gallons</td>
<td>6597</td>
<td>8154</td>
<td>12144</td>
</tr>
<tr>
<td>Total cows owned</td>
<td>3456</td>
<td>3637</td>
<td>4517</td>
</tr>
<tr>
<td>Average number of cows per distributor</td>
<td>17.5</td>
<td>28.4</td>
<td>31.8</td>
</tr>
<tr>
<td>Increase per cent in total sales over 1920 and 1925 over 1915</td>
<td>23.6</td>
<td>88.6</td>
<td></td>
</tr>
<tr>
<td>Increase per cent total sales 1925 over 1920</td>
<td>65.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gallons wholesale</td>
<td>886</td>
<td>1426</td>
<td>1260</td>
</tr>
<tr>
<td>Per cent wholesale</td>
<td>13.4</td>
<td>17.4</td>
<td>10.1</td>
</tr>
<tr>
<td>Per cent of 1915 distributors continuing in business</td>
<td>21.3</td>
<td></td>
<td></td>
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<tr>
<td>Per cent 1920 distributors continuing in business</td>
<td>36.7</td>
<td></td>
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<tr>
<td>Average no. gallons sold per distributor</td>
<td>33.4</td>
<td></td>
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<tr>
<td>Average gallons distributed by 20 distributors continuing to 1925</td>
<td>84.0</td>
<td></td>
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</tr>
<tr>
<td>Average gallons distributed by 47 1920 distributors continuing to 1925</td>
<td>75.1</td>
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Production

The condition of the producer in 1926 was shown to be entirely unsatisfactory. Producers were in an unfavorable position because of high cost of feed and the high cost and scarcity of labor. A wage of $75 per month with room and board was necessary to secure dairy barn labor. The wife and children were doing the field and much of the barn work on many dairy farms visited.

Authors of the 1926 report give the average price received for 4% whole milk in 1925 as $2.15 per cwt.; they computed the return from factory cream, the price of four pounds of butterfat sold as cream plus 25 cents per cwt. of skim milk, to be $2.10 per cwt. Producers of fluid milk were receiving only 5 cents per cwt. more for their product than the producers of factory cream. The report gives the cost computed by formula \(1/\) as $2.88 but supplements that with the following statement: "It was the general opinion throughout the territory that $2.50 a hundred net on the farm would enable the producer to maintain an American standard of living, improve his farm, and satisfy all sanitary regulations imposed by the city."

The larger dairymen, as a whole, did not complain about having to meet the sanitary requirements on their own farms. They did feel that they were treated

\(1/\) O.A.C. Extension Bulletin 371.
unfairly when they had to meet these sanitary regulations at all times, while in
times of shortage, milk that was intended for condenseries and cheese factories was
dverted to the distributing plants in Portland without any inspection at the source
of production. According to the 1926 report, many smaller dairymen could not afford
to meet the sanitary requirements of the Portland milk ordinance, and strict enforce-
ment of sanitary regulations would have forced many of these smaller dairymen to
discontinue shipping to the Portland market. Regulations were, therefore, not
strictly enforced.

Producers were universally of the opinion that there had to be an improvement
in conditions. It was frequently suggested to those making the 1926 survey, that
notwithstanding the unfortunate experience with previous attempts at cooperative
marketing, a cooperative organization would probably be necessary to alleviate the
producers' difficulties.

Before the producers organized, however, other factors came into the picture
to increase their problems. These were increased sanitary regulations and changed
general economic conditions.

STATUS OF THE MILK INDUSTRY FROM 1929 UNTIL 1934

New Emphasis Placed on Milk Sanitation

Many changes were made in Oregon's milk industry in the five-year period
beginning with 1929. During that time it went through a cycle similar in many
respects to a long-time development; that is, the desire of certain individuals for
safer milk, public education, intensification of sanitary regulations, and further
specialization by the industry. Economic adjustments made necessary by the change
in sanitary standards were intensified by the low level of economic activity between
1929 and 1934. The industry emerged in 1934 with a smaller number of producers, a
greater degree of specialization, and more regulation by state and municipal
governments.

The following statement from the report of the Dairy and Food Commissioner
indicates the trend of thought of the period.

"This market milk survey has shown us that the quality of milk as
distributed in the various cities and towns of the State of Oregon is
capable of much improvement. It has emphasized the need for more
stringent state laws governing its production and distribution, es-
pecially in the matter of sterilization of equipment. It has shown
the necessity for official inspection and control of pasteurization
methods so that pasteurization may really mean something. It has,
perhaps more than anything else, shown the need for adequate local
inspection and control by means of rigid milk ordinances and competent
local inspectors regularly employed."1/

1/ Report of the Dairy and Food Commissioner to the Thirty-Fifth Legislative
Assembly in 1929. The survey mentioned was conducted by the State Dairy and
Food Commissioner's staff with the assistance of the Bacteriology Department of
Oregon State College.
While the state commissioner was agitating for higher quality standards for market milk, certain public-minded citizens in Portland and other cities were instituting campaigns for the same purpose. Portland newspapers took up the issue in the summer of 1929. At the request of civic clubs, a representative of the United States Public Health Service came to Portland to survey the metropolitan market. This survey showed that in spite of the existing sanitary regulations, Portland's market milk supply was of very poor quality. Bacterial counts as high as 7,000,000 per cc. were not uncommon in raw milk. The adoption of the United States Public Health Service Standard Milk Ordinance was recommended. This ordinance placed more stringent regulations on milk production and handling than any that had been in force previously in this state and provided for closer inspection and checking to eliminate uninspected milk from the market. It provided standards of construction and care of buildings and equipment and for enforcement by municipal inspectors under the direction of the Public Health Service rather than the State Dairy and Food Commissioner.

The Portland City Council adopted the Standard Milk Ordinance in February 1930, to become effective October 1, 1930. The responsibility of having enough qualified milk at that time was left up to the distributors. Several firms had fieldmen helping producers improve their facilities to meet the requirements of the ordinance. Many dairymen, however, did not attempt, or were financially unable, to meet the new requirements and withdrew from the market milk business. Data indicate that 1386 producers shipped to the Portland market during 1930 as compared to more than 2500 in 1929. 1/

The campaign for cleaner milk spread to other cities throughout the state. By 1934, eleven Oregon cities had adopted the Standard Milk Ordinance and several more had adopted new local ordinances.

Economic Adjustments by the Industry

The increased investment in buildings and equipment, and increased costs of production and distribution imposed on the industry by the new sanitary regulations were made even more burdensome because of the lower prices which prevailed after 1929.

Several factors, however, tend to make milk production attractive during such periods of low prices. A large percentage of Oregon's milk producers consider dairying a means of marketing grains, hay, pasture, and labor. As prices dropped from 1929 to 1933, milk production became an increasingly popular method of marketing farm-grown feeds. Even though prices received for butterfat declined with other prices, the bimonthly milk check was a source of income from products that might not otherwise have been sold. This advantage was further increased by the fact that prices received for dairy products declined relatively less than those received for other agricultural commodities. Chart II shows this relationship to other farm prices and the decline in farm purchasing power.

1/ Information for this section supplied by: Mr. Marshall Dana, Associate Editor, Oregon Journal; Mr. O. O. Simpson, Oregon State Department of Agriculture; Mr. C. E. Everts, Jr., formerly in charge of milk sanitation for the State Board of Health.
CHART II

COMPARISON OF FARM PRICES RECEIVED AND RETAIL PRICES PAID
BY FARMERS IN THE UNITED STATES, 1927 TO 1936

(1910-14 = 100)

--- Retail prices paid for commodities used in living and production
- Prices received for dairy products
- Prices received for grain
- Prices received for all groups of farm commodities
- Ratio of prices received to prices paid

Source of data: Crops and Markets, U.S.D.A.
Table 2. Cows and heifers kept for milk production; total production of milk on farms, United States and Oregon; prices received by farmers for dairy products and factory payrolls, United States index numbers 1924-40

1929 = 100

<table>
<thead>
<tr>
<th>Year</th>
<th>Cows and heifers two years old and older kept for milk production(^1)/</th>
<th>Total Production of milk on farms(^1)/</th>
<th>Prices received by farmers for dairy products(^2)/</th>
<th>Factory payrolls(^2)/</th>
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<td>112.8p</td>
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1/ Agricultural Statistics, U.S.D.A., 1927-1940
2/ Crops and Markets, U.S.D.A., 1930-1940
3/ Agricultural Outlook Charts, Demand, Credit and Prices, U.S.D.A. 1941

p - preliminary
Trends in milk production and prices for the period 1924-40 are shown in Chart III. The index of factory payrolls is given as an indication of consumer purchasing power during the same period. The increase in number of cows and heifers may be attributed partly to attempts of those already milking cows to maintain their gross income by increasing the size of their herds, and partly to new producers who shifted from other enterprises.

The efficiency of various producers should be considered. It is significant that a large number of them maintained a dairy enterprise as one part of general farming operations; therefore, herd sizes were smaller on those farms than on the commercial dairy farms. The general farmer with his small herd who used his cows to convert feeds and his own labor to money had a lower cash outlay than the dairyman who had to purchase feed and hire labor. The fact that dairying was used as a means of marketing farm feeds, however, would indicate that less high quality supplemental feeds were purchased and production per cow was lower. The number of cows and heifers two years old and over kept for milk production in the United States increased 19.9 per cent between 1929 and 1934, but during that time total milk production on farms only increased 2.6 per cent (see Table 2.)

With this condition prevailing in the dairy industry as a whole, the producers of market milk found themselves with not only an increased production by those who had formerly been producing for this market, but also with an influx of new producers who had shifted from factory to market milk outlets. Because of the greater degree of sanitation demanded, the cost of producing market milk was higher than the cost of producing milk for factory uses. It was customary to pay the producers a higher price for milk used in the bottle and can trade in order to secure a regular supply. Table 3 and Chart IV show the prices paid for these different grades of milk. In the period of low prices, the higher gross income from fluid milk attracted dairymen anxious to get all the cash income possible. But while this prospect of a larger gross attracted the attention of new producers, adverse economic conditions made it unusually difficult to meet the sanitary standards required. Much of the difficulty in enforcing the higher standards of sanitation in the 1930's was due to the inability of producers to finance any additional investments.
TRENDS IN MILK PRODUCTION, UNITED STATES AND OREGON;
INDEX OF PRICES RECEIVED BY FARMERS FOR DAIRY PRODUCTS;
INDEX OF FACTORY PAYROLLS, UNITED STATES, 1924-40
1929-100

Source: Table
**Table 3. Prices paid for one-hundred pounds of four per cent milk**

**f.o.b. fluid milk distributing plant and f.o.b. condensery**

**and of butter equivalent of one-hundred pounds of four**

**per cent milk**

**Portland market - 1917-39**

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<tr>
<th>Year</th>
<th>Fluid milk price</th>
<th>Condensery milk price</th>
<th>Milk used for butter*</th>
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<tr>
<td>1939</td>
<td>2.32</td>
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<td>1.32</td>
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</table>

* Yearly averages of 92 score cube prices, wholesale, Portland, 1st and 15th of each month plus 23% allowance for overrun. Prices are based on wholesale butter prices in Portland. Source of data: Milk prices—Dairy Cooperative Association; butter prices—Northwest Daily Produce News, 1920-38, Morning Oregonian, 1939.

Higher costs of sanitation after the new ordinances were applied offset lower costs of labor and feed, and the spread in price between market and factory milk increased after 1929. In so far as the added cost of sanitation was due to labor expended, the producer was increasing the market for his and his family's labor. This labor factor was especially important when the producer distributed his own milk. The number of producer-distributors serving the Portland market increased from 107 in 1930 to 124 in 1935. In the Eugene market, the number increased from 7 in 1930 to 28 in 1933.
CHART IV

PRICES PAID FOR ONE HUNDRED POUNDS OF FOUR PERCENT MILK
F.O.B. FLUID MILK DISTRIBUTING PLANT AND F.O.B. CONDENSARY
AND OF BUTTER EQUIVALENT OF ONE HUNDRED POUNDS OF FOUR PERCENT MILK

PORTLAND MARKET 1917-1939

Source: Table 3
The increased volume of milk drawn to the fluid market added to surpluses in that market and forced lower prices to the producer. Many farmers were carrying heavy debt loads. Because of low prices, they were unable to meet monthly instalments on mortgages, pay taxes, or make the necessary improvements to properly comply with sanitary regulations. In some cases, banks had to finance purchases of hay and feeds in order to keep their borrowers operating. Data published by the United States Department of Agriculture\(^1\) show that the index of purchasing power per head of milk cows in the United States dropped from 143 in 1930 to 60 in 1934.

Health officers and market milk producers have stated that the conditions of sanitation varied directly with the prices received by producers. Sanitary regulations helped to keep down the number of new producers, but even those who had expended the money for necessary equipment and buildings were influenced in their use of those facilities by the price received for milk. An attempt on the part of health officials to enforce strict compliance with sanitary standards would have caused a shortage of milk, because producers did not have the capital to invest in adequate facilities or did not feel that the return was great enough to pay for the added costs of producing milk which would meet sanitary standards.

Organization of the B Grade Dairymen

As the economic problems of the dairy industry became more acute, the interest in a cooperative organization expressed earlier by Portland milk producers became stronger. Dairymen supplying the Portland and Salem markets in 1929 produced a large surplus of milk meeting requirements for the bottle and can trade.\(^2\) These men were offering their milk for sale as individuals, thereby bidding against each other and contributing to the lowering of the price. Organized dairymen were getting more for their milk going into cheese in some parts of Oregon than the dairymen in the Portland milkshed received for market milk.

There were about 20 per cent fewer dairy cows in Multnomah County in September 1929 than three years earlier, and carloads of cows were being shipped out each week to California. Were it not for the sale of these cows, the dairymen would have been in even worse condition.\(^2\)

A group of producers organized the Dairy Cooperative Association in November 1929 for the purpose of dealing with the distributors within each market area and for delivering to them only their requirements for the bottle and can trade. The surplus was to be sold or manufactured by the Association.

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1/ "Purchasing power per head of milk cows" - index numbers (1910-1914=100) 1941 Agricultural Outlook Charts, Dairy and Poultry, U. S. Department of Agriculture.

2/ Application of Dairy Cooperative Association for loan from Federal Farm Board.
The application of the new milk ordinance in the summer of 1930 slowed down the organization work by decreasing the number of producers and holding the price up during the normally low price period found in the spring and summer months. (See Chart V.) When the ordinance became effective, however, the higher costs of production and greater investment made the maintenance of a fair price to the producer even more important. The installation of a permanent manager and a board of directors early in 1931 created an effective organization, thereafter the cooperative progressed rapidly.

Fifty-two per cent of the B grade herds passed by the city milk inspection division in the Portland, Salem and Vancouver milksheds were signed as members of the Association by March 10, 1931. This number had been increased to 60 per cent by April 4 and 65 per cent by May 4.1/

Apparently to hinder progress of the cooperative, certain distributors or creameries in Portland attempted to make written contracts with producers to keep their milk away from the Association.2/ Others threatened to and did stop buying from some producers who signed with the Association. Both the Portland distributors and the producer organization encouraged producers of C grade milk to qualify for the higher grade even though there was a 20-30% surplus of B grade milk entering the market.3/

Producers were being paid a price of $1.90 per cwt. of 4 per cent B grade milk f.o.b. city plants for that portion of the milk sold to the bottle and can trade. Lower prices received for surplus milk sold for manufacturing purposes caused the dairymen to receive an average unit price for their product of less than three cents per quart while milk was retailing for as much as 12 cents per quart in city markets. By purchasing from independent dairymen, the distributors could decrease the percentage of Cooperative milk used in the bottle and can trade, thus increasing the percentage of surplus and lowering the net return to the cooperative dairymen. The Association was faced with much the same problem that caused the downfall of the Dairymen's League a few years before.

Operating as a bargaining agent for its members, the Cooperative attempted to negotiate marketing agreements with distributors in the Portland and Salem markets. The Cooperative asked for an increase in price to $2.25 per cwt. of 4% milk and a written contract for a three-year period binding the distributors to purchase milk only from Cooperative members, except for existing contracts, and to not pay more for milk to non-members than to members.

1/ Progress reports as of April 4, March 10, and May 4, 1931. Dairy Cooperative Association.


2/ Ibid.
Negotiations between the Association and distributors were carried on for some time in the early summer of 1931. Failure to reach agreement caused the producer group to resort to forceful action. With a "milk strike" lasting five days early in August they attempted to cut off milk supplies from Portland and Salem distributors who had refused to sign contracts with their Association. Highways were blockaded; all milk trucks were stopped. Those with milk for friendly distributors were allowed to go on to the market; others were either directed to other market outlets or the milk was dumped along the road. Cheese and condensery plants processed milk from cooperating dairymen which was in excess of the needs of distributors permitted to operate normally. Thousands of gallons of milk were shipped in by rail from Seattle and California cities by distributors attempting to break the strike and much discontent was created because city officials permitted sale of this milk which came from un inspected dairies. Before the end of the strike, an ordinance was passed in Portland forbidding its sale in that city.

State and city officials attempted to bring about arbitration. A committee of prominent Portland citizens was formed to meet with leaders of producer and distributor groups and was able to bring about an agreement in the Portland area. Distributors signed a contract with the Association for purchase of milk at the price of $2.17 1/2 per cwt. of 4 per cent milk. To prevent further upheavals, provision was made for an arbitrator to determine prices and policies in the future, subject to the agreement of the two groups. When they could not agree, either had the privilege of asking for a board of arbitration to review the rulings of the "Czar." President W. J. Kerr of Oregon State College was given the privilege of appointing the arbitrator, and named to the position, Rabbi Henry Berkowitz, who had been chairman of the committee which brought about the end of the strike. Although he was in a position to direct the course of the milk industry, he lacked power of enforcement. Theoretically his position was one of strength, but the individual interests of distributor and producer groups, intensified by pressure of the times, stripped it to that of a mere advisor. In the Salem area, producers were successful in forcing all distributors to contract with the Association at the demanded price of $2.25 per cwt. of 4% milk.

The Period of Dispute and Arbitration

Disputes and attempted arbitration, litigation over broken contracts, and cutthroat price competition dominated the milk industry following the settlement of the strike. At the close of the strike, both groups agreed that thereafter the price paid by distributors would be fixed for periods of one year, beginning January 1, 1932. Arbitrator Berkowitz set the price for 4% milk at $2.10 per cwt. for the year 1932. Although distributors considered that too high, they paid it until May 1 when the price was set by mutual agreement at 22 cents per pound butterfat over Seattle butter print price for milk and 12 cents per pound butterfat over Seattle butter print price for cream. This was to have continued until January 1, 1933, but on August 15 a flat price of $1.50 per cwt. of 4% milk and 36 cents per pound butterfat for cream was adopted by mutual agreement. The price change to $1.50 was made because of the extremely low prices being paid for condensery milk, and a distributor's war had forced the retail price down to 8 cents per quart. The price during this time is shown in Chart V.

1/ Newspaper accounts of negotiations and the milk strike. The Oregon Journal, the Oregonian, and the Gresham Outlook, August 1-August 7, 1931.
PRICE PAID FOR MILK TO BE USED in the PORTLAND BOTTLE AND CAN TRADE and HILLSBORO CONDENSARY 1928-1932

1. Normal seasonal fluctuations
2. Dairy Co-op incorporated
3. Standard Ordinance adopted
4. Standard Ordinance became effective
5. Milk strike
6. Distributors' war began

Price to producer for 4% milk
- f.o.b. Portland Damascus Milk Co.
- f.o.b. The Carnation Co., Hillsboro
An arbitration board of three set the price for January 1, 1933, at $1.6125 per cwt. of 4% milk, but the award was not accepted.1/ A second award set the price of 4% milk at 50 cents per cwt. over Hillsboro condensery prices, effective February 1.2/

When the parties were again unable to agree, the Cooperative Association requested arbitration. A. E. Engbretson of the John Jacob Astor Experiment Station, Astoria, Ray C. Smith of the Medo-Land Creamery, Eugene, and Jack Lewin of Sealy Dresser Company, Portland, were appointed arbiters. The time of this arbitration makes advisable consideration of the facts presented. The Cooperative asked for an increase in price from $1.70 to $2.10 per cwt. of 4% milk on the grounds that the price being paid was below cost of production; there had been an increase in the cost of feed; the price being paid was one of the lowest in the United States; and that the price was not sufficient to maintain an adequate supply of pure milk for the market. Distributors countered with arguments contradictory to these points. Data introduced by the Association gave and substantiated the cost of producing 4% milk as $1.63 per cwt. on the farm and $1.85 delivered in Portland. Using this transportation cost, the producer at a price of $1.70 f.o.b. Portland was receiving $1.40 or 37 cents less than cost of production. Costs introduced as evidence by the Association were computed by members of the Farm Management Department of Oregon State College. To this cost of $1.85 per cwt. of 4% milk, the Cooperative asked to add 25 cents to cover the cost of services it performed, given as fieldman service to improve quality of the milk, operating a skimming plant for surplus milk and production of B grade cream, and carrying an adequate supply of both milk and cream to supply short time increases in demand.

Evidence was introduced to show that the price paid by Portland distributors for 4% milk was $1.70 per cwt. as compared to $2.04 per cwt. average for 120 of the major cities of the United States and $2.18 per cwt. for six Pacific Coast cities, listed in the monthly report of market milk prices published by the United States Department of Agriculture, and that the Portland retail selling price per quart was substantially lower than in all but four of the 130 cities reported.3/ The monthly reports of fluid milk prices published in Crops and Markets for August, September, and October, 1933, fail to substantiate these price data. Portland prices to producers are lower than the six coast cities listed in that report but not as much as was indicated by the evidence presented at the hearing.

While distributors were wrangling with the producer organization about prices, they were fighting among themselves for the consumers' trade. Price cutting, both by lowering price per quart and by increasing butterfat content of the milk was common. There was much door-to-door solicitation of customers on retail routes. Price reductions by one distributor were met by others, and in time the price to the producer was lowered proportionately. Retail stores used fresh milk as a leader, in

1/ Sec. 7. Supplement to Contract of August 6, 1931, between the Cooperative Association and the distributing firms. A party requesting arbitration was not permitted to again request arbitration until ninety days after granting of the first award. This did not, however, prevent any one of the other 27 distributing firms from requesting arbitration, and because the contract bound the Association to sell milk to all distributors at the same price any arbitration in operation affected the whole market.

2/ All prices in this section taken from the records of the Dairymen's Cooperative Association.

3/ December 1933, Portland. Report of A. E. Engbretson in the matter of the request of the Dairy Cooperative Association for arbitration of milk prices as provided under a contract as between themselves and the 28 distributors who are signers of the Portland contract.
some instances selling it for prices as low as 4½ cents per quart of 4% milk. 1/

In the wholesale trade, rebates and price concessions were given by many firms. Use of equipment such as ice boxes and signs for advertising were given free or for a small charge. These practices were common throughout the state. A variation of this may be seen in Corvallis at the present time. One distributor makes signs and charges only for the materials used—nothing for the service. Each placard carries an advertisement for the distributor’s products.

A brief review of the Eugene market conditions illustrates what was happening in many others. From November 1929 to February 1931 the price paid to producers by the Farmers’ Creamery was $3.00 per cwt. of 4% B grade milk. The retail price was 12 cents per quart. The Creamery had 75% of the city’s retail milk market. In October 1930 this organization had a 3% surplus. There were two other distributors and seven producer-distributors during 1929-1930. Fifty-six producers supplied the B grade market. While these producers, though their association, maintained their prices, new producer-distributors entered the market to sell at 10 cents per quart retail. The Association lowered prices to $2.40 per cwt. of 4% milk and 10 cents per quart retail in February 1931, but by then a second new group of producer-distributors had entered the market and milk was being retailed at 8 cents per quart. The number of producer-distributors increased from 7 to 28. As in 1926, in Portland, the large number of distributors and constant entry of new ones kept the market in a state of turmoil both with respect to price and quality. While they maintained a large volume and high prices, the Farmers’ Creamery had been boosting quality; at least 18 of the 56 B grade producers would have met all A grade requirements. With the fall in price and unsettled conditions in the industry, the emphasis changed from quality to price and this high quality was lost. The farmers’ organization was unable or unwilling to regulate milk prices to changing economic conditions. A number of dairymen who had previously been selling C grade milk qualified for A grade, and the Eugene market changed from one of well regulated quality and supply to one of surplus and cutthroat competition with little regard for quality. 2/

DIRECT ECONOMIC REGULATION OF THE MARKET MILK INDUSTRY

In the depths of the depression, the market milk industry found itself badly involved in many economic problems which, it appears, had been growing steadily worse for over twenty years. Other groups were temporarily in distress, but the market milk men were not only burdened with increased competition and lowered prices, but also with new legal regulations designed to safeguard public health by improving the quality of their product. These new legal regulations required an increase both in capital outlay and in operating expenses. Collective bargaining had proved helpful for a short while, but its effect was slowed down by court action and by long bitterly-fought arbitration proceedings. Bankruptcy and mortgage foreclosure were taking their toll of producers and distributors. Available data

1/ Retail store advertisements. The Oregonian, February 11, March 11, April 22, May 6, 1933.

2; Data supplied by Mr. Thomas Olhsen, formerly manager of Eugene Farmer’s Creamery.
indicate that quality of milk was lowered, but of even more serious consequence was the prospect of complete collapse of the industry and its ability to supply safe milk in the future.

From the very conditions that intensified the problems of the market milk industry came a new concept of vested rights that would not have been accepted a few years earlier. Many groups in distress turned to state and federal governments for aid. They placed economic regulation of many lines of business in government-appointed boards and commissions, and gave these regulatory bodies broader powers than had been permitted previously. The following excerpt from the decision of Justice Daniel W. O'Donaghue of the Supreme Court of the District of Columbia in cases involving the fixing of fluid milk prices illustrates the philosophy that came to the front during this period:

"The day is passed when absolute vested rights in contract or property are to be regarded as sacrosanct or above the 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."

In this swing to governmental regulation of economic activity within the industry, leaders in the market milk business saw a possible solution to the economic problems that had become greater as sanitary regulation tightened its hold.

National Regulation under the AAA

Dairymen, like other farmers, sought help from the United States Department of Agriculture under the Agricultural Adjustment Administration. Attempts were made through the use of marketing agreements to regulate fluid milk distribution in several cities. Rigid price schedules were established and dealers were required to obtain licenses and comply with regulations.

Certain members of the market milk industry supplying Portland attempted early in 1933 to establish one of these marketing agreements, but it was never completed. The Oregon industry undoubtedly was affected some by government purchase programs for manufactured dairy products and the purchase of diseased milk cows, even though the direct control by agreement was never instituted.

Regulation by states

Several states were regulating milk production and distribution at the same time that the AAA was struggling with it on a national scale. The first of these attempts was begun in New York in April 1933. The New York law created a "Milk Control Board" with power "to supervise and regulate the entire milk industry of New York State, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk and milk products in the State of New York." To enforce its powers, the Board was given the power of subpoena and the power to enter and inspect private property. It had power to license milk dealers and to revoke licenses for due cause; it had power to fix by official order the minimum and maximum prices to be charged for milk handled in the state for fluid consumption. Constitutionality of price fixing under this law was immediately contested in the New York and Federal courts. It was upheld by the United States Supreme Court in Nebbia vs. New York, March 5, 1934.
Development of the Oregon Milk Control Act

In Oregon, organized producers appear to have taken the initiative in 1933 in bringing about direct economic control of the market milk industry. As stated before, their economic conditions were bad, and they were seeking a means of getting a price that would permit them to remain in business. The AAA marketing agreement was considered as a possibility, but when chances of help from the national agency appeared unlikely, leaders turned their attention to a system of state control.

A milk control bill, patterned closely after the New York act, was written by the attorneys of the Dairy Cooperative Association in Portland. The authors state that the bill was discussed with numerous members of the Portland market milk industry and other interested parties, but the direction of its development came principally from the officers of the Dairy Cooperative.

The bill was introduced into the Second Special Session of the Oregon Legislative assembly on November 25, 1933. Nearly all of the bills considered at that Session were of an emergency nature and newspaper accounts indicate that the intense pressure to complete the work required before the end of the twenty day session was a dominant force influencing the legislators. There is little information available to show progress of legislation. Lobbyists who were present say that due to its emergency nature and the shortness of time available much of the work was done very informally, with few committee meetings and hearings.

The bill was introduced in the Senate by Senator Arthur Ireland of Washington County, vice president of the Dairy Cooperative Association, and Senator Joe E. Dunne of Multnomah County, for many years associated with the milk and ice cream business in Portland; Representative E. J. McAlear of Washington County sponsored a similar bill in the House. Members of the Dairy Cooperative attended the sessions in large numbers to support the bill, while some independent dairymen opposed its passage. Opinion of the Portland distributors was divided, and chain stores opposed it. A. E. Clark, a Portland attorney, represented the Dairy Cooperative which was working for the control measure at the legislature. Clark states that conditions of the industry and trade practices prevalent at the time were the main arguments used by sponsors of the bill. It passed the Senate December 6 and the House December 9, 1933, the final day of the session. An emergency clause was attached to the bill, hence it became effective when signed by the Governor on December 15, 1933.

Objectives of the Oregon Milk Control Act

The preamble to the Oregon Milk Control Act given below portrays the spirit in which the act was passed, and the hopes of those members of the industry who supported it.

"Whereas the production and distribution of milk and cream is a paramount industry upon which to a substantial degree, the prosperity and health of the people of the State of Oregon depend; and the present economic emergency is in a large part the result of the disparity between the prices of milk and cream and other commodities,

1/ Chapter 72, Oregon Laws Second Special Session, 1933.
which disparity has diminished the power of milk producers to purchase industrial products, has broken down the orderly production and marketing of milk and cream and has seriously impaired the agricultural assets supporting the credit structure of the state and the local political subdivisions thereof; and

"Whereas unhealthful, unfair, unjust, destructive and demoralizing economic trade practices have grown up and are now carried on in the production, sale and distribution of milk and cream and milk and cream products in this state which impair the dairy industry in the state and the constant supply of pure, wholesome milk to the inhabitants thereof, and constitute a menace to the health and welfare of the inhabitants of the state; and

"Whereas, in order to protect the well-being of the people of the State of Oregon and promote the public welfare, the production, transportation, manufacture, storage, distribution and sale of milk and cream in the state hereby is declared a business affecting the public health and interest which should be supervised and controlled in the manner hereinafter provided."

The Milk Control Board

To carry out these objectives, the act created a milk control board of three members to be appointed by the Governor and subject to removal by him at any time. The Board was given power, as an instrumentality of the state, (a) to confer and cooperate with other state and federal agencies when necessary to accomplish the purposes of the act and to obtain a uniform system of milk control with respect to milk coming into and going out of this state; (b) "to investigate with Oregon State College all matters pertaining to the production, manufacture, storage, transportation, distribution and sale of milk in the State of Oregon; (c) to supervise and regulate the milk industry of the state, including production, as defined in Section 13 hereof, transportation, manufacture, storage, distribution and sale of milk; (d) to act as mediator or arbiter in any controversial issue that may arise among or between milk producers and milk dealers as between themselves, or that may arise between them as groups; (e) to examine into the business, records and accounts of any milk dealer, to issue subpoenas to milk dealers and to require them to produce their records, books and accounts; (f) to subpoena any other person from whom information is desired; (g) to take depositions of witnesses within or without the state; (g) to adopt and enforce all rules, regulation and/or orders necessary to carry out the provision of this act; (h) to exercise such other powers as hereinafter are specified."

1/ "Milk" means fluid milk and sweet cream sold for human consumption in fluid form.
Regulation of distribution

All milk dealers were required by the law to obtain a license issued by the Board. Operation without a license or obtaining milk from an unlicensed dealer was declared unlawful, except that the Board was given authority to exempt from the license requirements milk dealers selling milk in any quantities in cities of 15,000 population or less. Power was given to decline to grant licenses or to revoke or to suspend them upon due notice and opportunity to be heard when it appears that the milk dealer has violated any provisions of the act or has failed to obey any lawful subpoena, rule, regulation, or order of the Board. To provide money to cover expenses incurred, all stores were assessed an annual license fee of $1.00 and all milk dealers an amount equal to one-fourth of one cent on each pound of butterfat in milk handled by the licensee commencing with the effective date of the act. Keeping of records and reports required by the Board for computing the amount of the fee or other information necessary to the enforcement of the act was made mandatory.

Regulation of supply and price

To control supply for a given market, the Board was given power to define natural market areas and to define and fix the limits of the milkshed within which milk could be produced to supply each area. Dealers were licensed to operate within a specific market or markets and required to buy milk produced in the milkshed designated for the area, except that producers, producer-distributors or their successors shipping to any market when the act was passed were permitted to do so until they voluntarily discontinued shipping to the designated milkshed.

The Board was authorized to "ascertain, as far as feasible, what prices of milk in the several localities and markets of the state will best protect the milk industry and insure a sufficient quantity of pure and wholesome milk in the public interest. The Board shall take into consideration all conditions affecting the milk industry, including the price necessary to a reasonable return to the producer and to the milk dealer."

"After making such investigation, the Board shall, by order, fix the minimum wholesale and retail prices to be charged for milk handled and sold within the state for human consumption in fluid form, and including the following classes: (a) by producers or associations of producers to milk dealers; (b) by milk dealers to stores for consumption on the premises, or for resale to consumers or to others; (c) by stores to consumers or to others except for consumption on the premises where sold; (d) by producer-distributor and distributor for deliveries to homes of consumers." Price differentials based on differences in cost of the various services or on different grades of milk established by sanitary regulations were authorized if the Board found facts to justify them. Recognizing further differences in costs, each price order must designate the market area to which it is to apply and prices may vary in the different areas. After specific prices have been fixed by the Board, it is "unlawful to buy or offer to buy, sell or offer to sell, any milk at prices other than the prices fixed by order of the Board; and any method, device or transaction whereby any person buys or offers to buy, sells or offers to sell at a price less than that fixed by order of the Board applicable to the grade of milk involved in the transaction occurred whether by discount, rebate, free service, advertising allowance, gift or otherwise, hereby is declared unlawful."
Extensive procedure was authorized for control of the problems of seasonal fluctuation of supply and disposal of surplus milk. To secure uniform prices for all producers furnishing milk to any specified market, the Board was empowered to define and limit the geographical area from which fluid milk could be produced for that market, and after consideration of the total fluid milk supplied to the market, to determine under uniform rules and regulations what proportion of the milk supplied by each producer should be considered as marketed as fluid milk and what proportion as surplus. All returns from the sales of fluid milk from the production area designated for a given market may be pooled and averaged and each producer paid a uniform pool price for his milk produced for the fluid trade. To regulate supply, the Board has power to decide each producer's share of the total market demands. Power is given the Board to arrange for handling and disposal of surplus fluid milk.

Producer-distributors were exempt from all pooling and quota rulings under the law, but were restricted to selling only A grade bottled milk to the market milk trade.

Legal Interpretations of the Act

Since its passage in 1933, the Oregon Milk Control Act has been subjected to several court tests, to consideration by four sessions of the Oregon legislative assembly and to a vote of the people of the state at a general election. These legal tests and the operation of the machinery authorized in the original Act have shown the need for changes in the Act and in the administrative policy of the Board. The fact that it has not been changed further is cited by some as illustrating that the original Act was well written. Four of the court decisions relating to the constitutionality of the Act which have had a bearing upon development of administrative policy of the Board are summarized below.

Meyer et al vs. Oregon Milk Control Board and Brandes Creamery, Inc.1/
This suit sought to enjoin, on constitutional grounds, the enforcement of the pooling provisions of the act of 1933. Particularly at issue was the authority of the Board to assess equalization charges as part of pooling operations.2/ The court strongly upheld the main provisions of the Act, including the licensing of dealers, minimum price fixing of milk and market-wide pooling, but ruled that the exemption

1/ In the Circuit Court, Multnomah County, before Judge Hall S. Lusk: decision February 8, 1936.

2/ Each dairyman shipping B grade milk to the Portland market was given a quota which was calculated as a fractional part of the total B grade milk used in the bottle and can trade during a specified base period. The individual quota bore the same proportion to the total of all quotas as the producer's milk production bore to the total amount of B grade milk used in the bottle and can trade during the base period. During each pool period, the Board determines the price to producers for quota milk, based on the amount sold in bottle and can channels and the amount sold as surplus. If a producer sells more than his quota in the bottle and can trade, he is required to pay back to the pool the difference between the calculated pool price and the surplus price for the amount of that excess. That money, commonly called an equalization payment, is used to bring up to pool price the average price received by producers who sold less than their quotas in the bottle and can trade.
of producer-distributors from the pooling provisions of the Act was invalid as an unlawful discrimination. This exemption had already been removed, however, by an amendment to the Act effective November 15, 1935.

Sweeney and Kennedy vs. Oregon Milk Control Board. 1/ In this suit the Court sustained the action of the Board in raising the retail price of milk in Portland when that market was allegedly faced with a shortage of pure, wholesome milk.

Oregon Milk Control Board vs. L. N. Oldenberg. 2/ The Court held that the law was not violative of any of the provisions of Federal or State Constitutions. The plaintiff, a producer-distributor, was selling milk in the Salem market without a license and at prices lower than those set by the Board. In addition, he had refused to pay poundage assessments or keep records of his milk business. This was the first suit involving the power of the Board to license milk dealers and to obtain injunctive relief against violators.

Savage and Fox vs. Oregon Milk Control Board. 3/ In this case the Supreme Court reaffirmed the right of the state to regulate the market milk industry through the regulations that had been set up under the Oregon Milk Control Act. Rational basis for pooling and quota provisions, the court said, lay in the argument "that the mere fixing of minimum prices does not suffice to accomplish the desired end of a stabilized market, for as long as the incentive remains to sell all the milk possible as fluid milk, the piling up of large surpluses will continue, the surplus burden will be unequally distributed, and the pressure to market surplus milk in fluid form will be a serious disturbing factor."

Changes in the Act by Legislative Amendment.

In addition to the amendment that made the producer-distributors subject to pooling provisions, the 1935 Legislature amended the licensing provisions of the original Act. Revenues received had not been sufficient to meet the expenses of administration. To remedy this the license fee per pound of butterfat was increased from 1/4 to 1/2 cent. All milk dealers were required to pay a one dollar license fee instead of only those dealers operating stores, except producer-distributors with only one cow who were exempt from all license requirements.

1/ In the Circuit Court, Multnomah County, before Hon. Louis P. Hewitt, Judge of the Circuit Court of the State of Oregon for Multnomah County. Decision November 6, 1936.

2/ In the Circuit Court of Marion County, before Hon. L. G. Lewelling.

3/ In the Circuit Court, Marion County, before Judge L. G. Lewelling. In the Oregon Supreme Court, in banc; opinion by Justice Hall S. Lusk. June 6, 1939.
Pricing policies and the manner of conducting hearings were changed in 1939. An order fixing uniform minimum prices throughout the state had been issued by the Board in April 1938. Amendments enacted in 1939 required that the market area covered by any one price order could include no more than one city or town together with the contiguous territory immediate around the same, where marketing conditions are the same, unless two or more towns or cities are so closely adjacent to one another that they comprise a natural market area. Each market area and production area from which that area is supplied may include only that territory in which conditions involved in the production, processing and distribution of milk are similar. A separate order of the Board in the establishment of minimum prices must now be made for each sales and production area and each such order must be preceded by a hearing held within the particular sales area affected by the order.

The price order that applied to the entire state fixed a price of 11 cents per quart for 4 per cent butterfat milk, with a maximum of 4.2 per cent butterfat at that price. As amended in 1939, the Act now provides that in those sales areas which do not have adequate facilities for the blending or standardizing of whole milk, and where blending or standardizing is not required under applicable local or state laws, the minimum prices for milk sold in the form of whole milk shall not be graduated according to fat content.

Any hearing required to be held by the Milk Control Board may be conducted in its absence by an examiner appointed by the Board or may be conducted by a single member of the Board. If a hearing is conducted in this manner, the examiner is vested with the full powers to examine witnesses, etc., held by the Board and the Board may act upon the records of the hearing as if it had been present. This provision was added in 1939 when the above amendments increased the duties of the Board to conduct hearings on price and other orders.