38th Annual Meeting  
NORTHEASTERN DAIRY CONFERENCE  
Hotel Sonesta  
Hartford, Connecticut  

April 5 & 6, 1973  

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# ANNUAL MEETINGS OF THE NORTHEASTERN DAIRY CONFERENCE

<table>
<thead>
<tr>
<th>Date</th>
<th>Hotel</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 4-5, 1934</td>
<td>Victoria</td>
<td>New York, New York</td>
</tr>
<tr>
<td>June 25-26, 1935</td>
<td>Bellevue</td>
<td>Boston, Massachusetts</td>
</tr>
<tr>
<td>Jan. 24-25, 1938</td>
<td>Garde</td>
<td>Hartford, Conn.</td>
</tr>
<tr>
<td>Mar. 7-8, 1940</td>
<td>Providence Baltimore</td>
<td>Providence, R. I.</td>
</tr>
<tr>
<td>Mar. 4-5, 1941</td>
<td>Benjamin Franklin</td>
<td>Philadelphia, Pa.</td>
</tr>
<tr>
<td>Mar. 3-4, 1942</td>
<td>Ambassador</td>
<td>Washington, D. C.</td>
</tr>
<tr>
<td>Jan. 11-12, 1943</td>
<td>Pennsylvania</td>
<td>New York, New York</td>
</tr>
<tr>
<td>Mar. 22, 1945</td>
<td>Commodore</td>
<td>New York, New York</td>
</tr>
<tr>
<td>Feb. 18-19, 1947</td>
<td>Onondaga</td>
<td>Syracuse, New York</td>
</tr>
<tr>
<td>Mar. 23-24, 1948</td>
<td>Penn Harris</td>
<td>Harrisburg, Pennsylvania</td>
</tr>
<tr>
<td>Mar. 17-18, 1949</td>
<td>Statler</td>
<td>Boston, Massachusetts</td>
</tr>
<tr>
<td>Mar. 30-31, 1950</td>
<td>Statler</td>
<td>Washington, D. C.</td>
</tr>
<tr>
<td>Apr. 19-20, 1951</td>
<td>Onondaga</td>
<td>Syracuse, New York</td>
</tr>
<tr>
<td>Apr. 8-9, 1952</td>
<td>Kimball</td>
<td>Springfield, Massachusetts</td>
</tr>
<tr>
<td>Mar. 26-27, 1953</td>
<td>Lord Baltimore</td>
<td>Baltimore, Maryland</td>
</tr>
<tr>
<td>Mar. 25-26, 1954</td>
<td>Statler</td>
<td>Buffalo, New York</td>
</tr>
<tr>
<td>Mar. 31 - Apr. 1, 1955</td>
<td>Statler</td>
<td>Hartford, Connecticut</td>
</tr>
<tr>
<td>Mar. 28-29, 1957</td>
<td>Statler</td>
<td>Boston, Massachusetts</td>
</tr>
<tr>
<td>May 1-2, 1958</td>
<td>Lord Baltimore</td>
<td>Baltimore, Maryland</td>
</tr>
<tr>
<td>Mar. 25-26, 1959</td>
<td>Hotel Statler</td>
<td>Washington, D. C.</td>
</tr>
<tr>
<td>Mar. 31 - Apr. 1, 1960</td>
<td>Hotel Syracuse</td>
<td>Syracuse, New York</td>
</tr>
<tr>
<td>Mar. 29-30, 1961</td>
<td>Hotel Stacy-Trent</td>
<td>Trenton, New Jersey</td>
</tr>
<tr>
<td>Mar. 28-29, 1963</td>
<td>Hotel Syracuse</td>
<td>Syracuse, New York</td>
</tr>
<tr>
<td>Apr. 2-3, 1964</td>
<td>Holiday Inn</td>
<td>Allentown, Pennsylvania</td>
</tr>
<tr>
<td>Apr. 1-2, 1965</td>
<td>Hotel America</td>
<td>Hartford, Connecticut</td>
</tr>
<tr>
<td>Mar. 24-25, 1966</td>
<td>Sheraton-Boston</td>
<td>Boston, Massachusetts</td>
</tr>
<tr>
<td>Apr. 6-7, 1967</td>
<td>The Parkway Inn</td>
<td>Niagara Falls, New York</td>
</tr>
<tr>
<td>Apr. 4-5, 1968</td>
<td>Statler-Hilton</td>
<td>Baltimore, Maryland</td>
</tr>
<tr>
<td>Apr. 1-2, 1971</td>
<td>Country House</td>
<td>Syracuse, New York</td>
</tr>
<tr>
<td>Apr. 5-6, 1973</td>
<td>Sonesta Hotel</td>
<td>Hartford, Connecticut</td>
</tr>
</tbody>
</table>

1/ No annual meeting. Constitution and Bylaws Committee appointed.
2/ No annual meeting. Conference met jointly with Northeastern State Farm Bureau Federations.
3/ No annual meeting. Only committee meetings.
TABLE OF CONTENTS

IMPORTANT ISSUES FACING DAIRY FARMERS

Welcome
Louis Longo................................................................. 1

The Environmental Issue

The Water Pollution Act of 1972
Allen Cywin................................................................. 3

How Can Farmers Comply
John B. Adams............................................................... 9

Issues in Planning, Acquiring, Using, and Transferring Farm Capital

The Availability and Use of Capital on Dairy Farms
Clinton Charter.............................................................. 24

Planning for the Transfer of Farm Capital
Verle Houghaboom......................................................... 32

IMPORTANT ISSUES FACING COOPERATIVES

The Financial Issue

The Growing demand and Cost for Cooperative Services
James Click................................................................. 39

How Can the Full Service Cooperative Finance Its Increasing Costs
Stewart Johnson........................................................... 44

-iii-
The Communications Issue

Problems and Needs in Developing Internal Communications in the Regional Cooperatives
A. C. Fisher.......................................................... 54

Annual Banquet
Agriculture - A Tool in American Foreign Policy
Don Tuttle.......................................................... 59

ISSUES IN FEDERAL MILK PRICING PROGRAMS

New Pricing and Pooling Alternatives for Federal Milk Orders
J. Robert Strain...................................................... 63

Future Dimensions of the Dairy Price Support Program
Harlan Emery.......................................................... 73

The Right to be Heard
Eugene Vandenbord............................................... 78
D. Paul Alagia, Jr.................................................... 82
Herbert Forest....................................................... 88
WELCOME
by
Louis Longo, President
Yankee Milk

On behalf of the nearby 6,000 members of Yankee Milk, Inc. in New England, welcome to the 38th Northeastern Dairy Conference at Hartford. Yankee is especially proud to be your host organization in the first year of its life — a big responsibility for one so young. We want you to feel at home so please ask us if there is anything that will make your visit more pleasant.

This city of Hartford has a long and illustrious history. It began as an outpost of Dutch fur traders from New Amsterdam in 1623. Later on Thomas Hooker led a band of followers from Cambridge, Massachusetts to the Connecticut Valley in 1636 and they named their new home Hartford. The land on which the city stands was actually purchased twice from different Indian tribes, once by the Dutch and later by Thomas Hooker and his company. It's safe to say that Connecticut Yankees haven't been caught since paying twice for the same property.

In 1669 some 200 men of the Connecticut Colony met at the Hartford Meeting House (on the spot where the Old State House stands today) to frame a government for themselves and their people. They adopted a constitution of eleven articles, which they called "Fundamental Orders" and thus was formed "one Public State or Commonwealth". These eleven articles, history's first written constitution establishing a government "by the free consent of the governed," played an important part in the cause for freedom and served as a model in shaping the construction of the United States.

Hartford is an exciting city that blends the subtle influences of the past with excitement of tomorrow. Hartford is the Capital of Connecticut and the hub of the 29 towns which form the "Capital Region". It is a tastefully blended potpourri of present and past. Modern downtown office towers and National Historic Landmarks, award-winning industrial facilities in park-like settings, and Connecticut's beautiful countryside, colonial homes and villages combine to provide exceptional diversity and quality of living in Greater Hartford.

Hartford is midway between New York and Boston, and approximately forty miles from Long Island Sound. Hartford is the "insurance city," where the home office of 32 insurance companies are located.

While you are here we hope that you will have time to visit many of the places of interest starting with the Constitution Plaza complex of which the Hotel Sonesta is part. This unique $40 million complex was opened in 1962 through 1964. Nearby is the Old State House, a superb example of the architectural genius of Charles Bulfinch. Now an historic shrine, it contains in its gracious rooms some of the original furnishings as well as colonial memorabilia. The Wadsworth Atheneum is among the nation's best.
and in addition to many art treasures, houses a collection of colonial furniture.

No visit to Hartford without a trip to the Mark Twain and Harriet Beecher Stowe Houses at Nook Farm would be complete. It's a short distance out Farmington Avenue.

Hartford is also noted for many fine stores within walking distance of the Sonesta. Because there are so many points of interest within Hartford, we have not planned specific tours for the ladies, feeling that they could suit their exploration of the area to their own individual tastes.

The staff of Yankee Milk is at your service. Please call on us if we can help. In the meantime, we hope that this year's Conference will be a source of inspiration to all of you in advancing the cause of dairy farmers and their cooperative marketing organizations.
MORNING SESSION - IMPORTANT ISSUES FACING DAIRY FARMERS

A. The Environmental Issue
   The Water Pollution Act of 1972
   How Can Farmers Comply

B. Issues in Planning, Acquiring, Using, and Transferring Farm Capital
   The Availability and Use of Capital on Dairy Farms
   Tax Considerations in Estate Planning
THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972
HIGHLIGHTS

by
Allen Cywin
Effluent Guidelines Division
Environmental Protection Agency

Industrial Pollution

The law sets deadlines for actions to control water pollution from industrial sources:

- Industries discharging pollutants into the nation's waters must use the "best practicable" water pollution control technology by July 1, 1977, and the "best available" technology by July 1, 1983.

- EPA will issue guidelines for "best practicable" and "best available" technologies for various industries by October, 1973. The guidelines can be adjusted by several factors, including the cost of pollution control, the age of the industrial facility, the process used and the environmental impact (other than on water quality) of the controls. EPA will also identify pollution control measures for completely eliminating industrial discharges.

- By May 1974, new sources of industrial pollution must use the "best available demonstrated control technology." This will be defined by EPA in the form of "standards of performance" for various industries no later than May 1974. Where practicable, EPA may require no discharge at all of pollutants from new industrial facilities.

- Discharges of toxic pollutants will be controlled by effluent standards to be issued by EPA no later than January 1974. EPA is required to provide an ample margin of safety in setting effluent standards for toxic pollutants. EPA is also empowered to prohibit discharges of toxic pollutants, in any amount, if deemed necessary. (EPA has already established, under earlier water pollution control legislation, strict limits on the discharge of such toxic pollutants as lead and mercury. The new law strengthens control of toxic pollutant discharges.)

- The 1972 legislation prohibits the discharge into the nation's waters of any radiological, chemical or biological warfare materials, or high-level radioactive waste.

- Any industry that discharges its wastes into a municipal treatment plant must pre-treat its effluent so that the industrial pollutants do not interfere with the operation of the plant or pass through the plant without adequate treatment. This requirement takes effect no later than May 1974, for new industrial sources of pollution, and no later than July 1976, for existing industrial facilities.
- The law also authorizes loans to help small businesses meet water-pollution control requirements. The loan program is designed for firms that would be likely to suffer "substantial economic injury" unless they receive financial assistance to comply with the law. EPA will issue regulations for the loan program by April, 1973. The loans will be made by the Small Business Administration, after EPA certification of the proposed controls.

Municipal Pollution

The law provides for more federal aid to local governments and sets deadlines for stronger control measures:

- Federal construction grants of up to $18 billion are authorized over the next three years to help local governments build needed sewage treatment facilities. (Actual payment of federal grants will extend over a nine-year period.)

- An additional $2.75 Billion in federal grants is authorized to reimburse local governments for treatment plants built earlier in anticipation of federal aid.

- The federal share of the cost of local treatment facilities is now 75 percent, with state and local governments paying the balance. (The maximum federal share was 55 percent under previous legislation.) The law also establishes an environmental financing authority to help state and local governments raise their share of the cost of treatment facilities.

- In order to qualify for a Federal Construction Grant, sewage treatment plants approved before June 30, 1974, must provide a minimum of secondary treatment. After that date, federal grants may be made only to plants that will use "best practicable" treatment.

- All sewage treatment plants in operation on July 1, 1977 - whether or not built with the aid of a federal grant, and no matter when built - must provide a minimum of secondary treatment. Exception: A plant being built with the help of a federal grant that was approved before June 30, 1974, must comply with the secondary-treatment requirement within four years, but no later than June 30, 1978.

- Also by July 1, 1977, all sewage treatment plants must apply whatever additional, more stringent, effluent limitations that may be established by EPA or a state to meet water quality standards, treatment standards, or compliance schedules.

- And all publicly owned waste treatment plants - whether or not built with the aid of a federal grant, and no matter when built - will have to use "best practicable" treatment by July 1, 1983.
Areawide waste treatment management plans are to be established by July 1976, in urban industrial areas with substantial water pollution problems. Federal grants of up to $300 million over the next three years are authorized to help areawide agencies develop and operate integrated water pollution control programs.

In order to be eligible for a Federal Construction Grant after July 1976, a waste treatment plant in one of these urban industrial areas must be part of, and in conformity with, the areawide plan.

Water Quality Standards

The law continues and expands the water quality standards program initiated under earlier legislation. (Water quality standards define the uses of specific bodies of water - such as public water supply, propagation of fish and wildlife, recreation, and agricultural and industrial water supply. The standards also include "criteria" based on those uses and a plan to implement and enforce the criteria. The standards must protect public health and welfare, and enhance water quality.) Here's how the new standards program will operate:

- Water quality standards previously established by states for interstate waters, subject to EPA approval, remain in effect unless they are not consistent with the objectives of the old law.

- The states must now also adopt water quality standards for intrastate waters and submit them to EPA for approval by April 1973. EPA is required to set standards for intrastate waters if the states fail to do so.

- If a state finds that the use of "best practicable" or "best available" controls are not adequate to meet water quality standards, more stringent controls must be imposed. To this end, the states must establish the total maximum daily load of pollutants, including meat, that will not impair propagation of fish and wildlife. EPA will identify by October 1973, pollutants for which maximum daily loads might be set.

- EPA is required to submit a report to Congress by January 1, 1974 on the quality of the nation's waters. The report must identify water bodies that, in 1973, met the 1983 goal of water quality adequate for swimming and for the protection and propagation of fish and wildlife. The report must also identify water bodies that might achieve the 1983 goal by 1977, 1983, or any later date. The report will also include an inventory of sources of water pollution.

- The states are required to submit to EPA similar reports each year on the quality of bodies of water within their borders. The first report is due by January 1, 1975.

- EPA is required to submit the state water quality reports to Congress each year, along with its own analyses, beginning no later than October 1, 1975.
- And at least once every three years, the states must hold public hearings to review their water quality standards and, if necessary, update the standards subject to EPA approval.

Permits and Licenses

The 1972 law establishes a new system of permits for discharges into the nation's waters, replacing the 1899 Refuse Act Permit Program. No discharge of any pollutant from any point source is permitted without a permit, and publicly-owned sewage treatment plants and municipally controlled discharge points as well as industrial dischargers must obtain permits. Here's how the new permit program operates:

- Until March 1973, EPA or a state with an existing permit program deemed adequate by EPA, may issue permits for discharges. State permits issued during this period are subject to EPA veto.

- EPA will issue guidelines for state permit programs by the end of 1972 and will approve by March 1973, state permit programs that meet those guidelines.

- After a state permit program goes into effect, EPA will retain the right, unless waived, to review and approve any permit that affects another state. EPA will also have authority, unless waived, to review proposed permits to determine if they meet the requirements of the new federal legislation.

- A state's permit program is subject to revocation by EPA, after a public hearing, if the state fails to implement the law adequately.

- The Army Corps of Engineers retains authority to issue permits for the disposal of dredge-and-fill material in specified disposal sites, subject to EPA veto of disposal sites if the discharge will have an adverse effect on municipal water supplies, fishery resources or recreation.

- Disposal of sludge from sewage treatment plants into water bodies or on land where it affects water quality is prohibited except under a permit issued by EPA. After EPA establishes regulations for issuing sludge-disposal permits, a state may take over the permit program if it meets EPA requirements.

- Anyone applying for a federal license or permit for any activity that might produce discharges into the nation's waters must obtain certification from the state involved that the discharge will be in compliance with the new law. States must give public notice of all applications for certification and may hold public hearings on certification applications.

- If a certification by one state will result in a discharge that may affect water quality in another state, a public hearing must be held by the Federal Agency that issues the license or permit, if requested by the second state. If the permit or license will result in discharges that are not in compliance with water quality requirements, the license or permit cannot be issued.
Enforcement

The law eliminates the earlier time-consuming system of abatement conferences and hearings to compel compliance with water pollution control regulations. Stringent enforcement machinery, with heavy penalties, now exists to speed compliance with the law. For example:

- EPA has emergency power to seek an immediate court injunction to stop water pollution that poses "an imminent and substantial endangerment" to public health, or that endangers someone's livelihood.

- Polluters must keep proper records, install and use monitoring equipment, and sample their discharges.

- EPA has the power to enter and inspect any polluting facility, to check its records and monitoring equipment and to sample its discharges. A state may assume this authority if approved by EPA.

- Except for trade secrets, any information obtained by EPA or a state about a polluter's discharges must be made available to the public.

- EPA may enforce permit conditions and other requirements of the law by issuing administrative orders that are enforceable in court, or by seeking court action.

- Penalties for violating the law range from a minimum of $2,500 to a maximum of $25,000 per day and up to one year in prison for the first offense and up to $50,000 a day and two years in prison for subsequent violations.

- Any citizen or group of citizens whose interests may be adversely affected has the right to take court action against anyone violating an effluent standard or limitation, or an order issued by EPA of a state, under the law. Any citizen or group also has the right to take court action against EPA should EPA fail to carry out mandatory requirements of the law.

- The 1972 law extends the oil pollution control, liability and enforcement provisions of earlier legislation to other "hazardous substances." These are defined as substances that "present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches."

- And to assist in enforcement as well as to measure the effectiveness of the water pollution control program, a national surveillance system to monitor water quality will be established by EPA in cooperation with other federal agencies and state and local governments.
Summary

The most comprehensive program even enacted to clean up the nation's waters became law on October 18, 1972. Known as the Federal Water Pollution Control Act Amendments of 1972, the new law mandates a sweeping federal-state campaign to prevent, reduce and eliminate water pollution.

The law proclaims two general goals for the United States:

1. To achieve wherever possible by July 1, 1983, water that is clean enough for swimming and other recreational uses, and clean enough for the protection and propagation of fish, shellfish and wildlife.

2. And by 1985, to have no discharges of pollutants into the nation's waters.

Those are goals. They reflect deep national concern about the condition of the nation's waters and a strong commitment to end water pollution.

Moreover, the goals set the stage for a coordinated series of specific actions that must be taken - with strict deadlines and strong enforcement provisions - by federal, state and local governments and by industries.

The new law builds upon and improves earlier federal water pollution control legislation. While the states retain primary responsibility to prevent, reduce and eliminate water pollution, they must now do so within the framework of a new national program. And if the states do not or cannot fulfill their obligations under the law, the federal government, through the U. S. Environmental Protection Agency (EPA), is empowered and directed to take action.

For the first time, the law extends the federal pollution control program to all U. S. waters: Previously, only interstate waters were covered by federal legislation.

Also for the first time, the law authorizes the federal government to seek an immediate court injunction against polluters when water pollution presents "an imminent and substantial endangerment" to public health, or when it endangers someone's livelihood.

The law also increases federal aid to help local governments build sewage treatment facilities, makes financial aid available to small businesses to help them control water pollution and provides streamlined and more stringent enforcement tools than ever before.
HOW FARMERS CAN COMPLY

by
John B. Adams, Director
Environmental and Consumer Affairs
National Milk Producers Federation

It is a pleasure for me to be with you this morning to speak on the subject of "How Farmers Can Comply with Pollution Control Laws and Regulations Affecting Animal Waste Management." It was my pleasure to be here at the Sonesta Hotel this past November to kick off our 56th Annual Convention program with our National Young Cooperators Pre-Convention Tour. At that time we convened here at the Sonesta and toured the Louis Longo farm and Sturbridge Village, and I think it proved to be one of the most successful pre-convention tours yet for the National Young Cooperators. I always like to get a plug in for the National Young Cooperator Program of the National Milk Producers Federation, since that has become one of my responsibilities.

When I contemplated my comments this morning, I was immediately struck by the challenge imposed by the title which was given to me by Chester Smith when he asked me to speak on "How Farmers Can Comply" My first thought was to convey to you a short story that I picked up recently which perhaps offers one alternative to our present animal waste management problems. It goes as follows:

"If all of the milk produced in this nation in one year was in quart containers and lined up side by side as it is on the grocer's shelves, this line would reach around the earth at the Equator 140 times. Or, if these same quart containers were stacked on top of the other, this stack would reach to the moon 30 times. Or, if we had a river that reached from Boston to San Francisco 3,000 miles long, 40 feet wide, and 3 feet deep, it would only hold one year's production of milk in this country. If all the people employed in the dairy industry were made into one giant man, it would take one full year's cotton crop to make him a pair of overalls. If all of the cows in the country that produced one day's supply of milk were in one giant cow, her left front foot would be in Lake Michigan, her right front foot in Lake Erie, and her left hind foot in the Gulf of Mexico, and her right hind foot in the Caribbean Sea. She could switch flies off the Equator with her tail, tear up the St. Lawrence Seaway with her horns, and lick the mist off the Northern Lights with her tongue. According to my calculations, if she eats the normal amount of green grass and her body functions are normal, standing in this position and Cuba located where it is, we should be able to bury Castro in the same stuff that he's been trying to feed us for years."

Well, this short tale might not pose a practical alternative to our present problems, but at least it is more easy to contemplate than perhaps some other alternatives which we might be faced with under the new Federal Water Pollution Control Act.
Of particular concern to the National Milk Producers Federation has been the fact that the term "concentrated animal feeding operation" as embodied within the definition of "point source" has not been more clearly defined to enable an individual to make a determination on his own whether or not he was, in fact, a point source of discharge, and thus required to make an application for a permit. We are hopeful that the new regulations covering agriculture will clarify this point, and also require states to notify individuals who will have to make application for a permit if, in fact, they fall under the cut-off level established by EPA.

Having considered these particular problems, how then does one proceed to comply having determined that one is subject to the permit program?

Procedure for Compliance

Rules and regulations at the state level for livestock waste control have been developed for most dairy areas. Many of these rules, regulations and guidelines are currently under revision and are being updated. This will continue to be necessary to bring such rules and regulations in line to meet yet-to-be-issued Federal effluent waste management guidelines for the Livestock Feedlots Industry. These guidelines are currently being developed by EPA under contract with a private contracting firm - Hamilton Standards, a division of United Aircraft Corporation. This group has been given the contract to develop regulations and standards for the dairy livestock segment of the Feedlots Industry. As I understand it, this group has been assigned the task of preparing, by late summer of 1973, recommendations to EPA on design, efficiency and cost of waste management alternatives that are currently available to dairymen. In addition, Hamilton Standards will recommend those practices which represent the best practicable control technology and best available control technology which can be achieved by dairymen by July 1, 1977 and July 1, 1983, respectively.

This study supposedly will isolate the various alternative waste management systems available, the cost and efficiency of these systems that will be acceptable to EPA for controlling animal waste management runoff problems. The systems isolated and recommended by this group will then be published in the Federal Register for comments by the public. At this point in time, the Federation will hopefully be in a position to comment on these proposals and make recommendations of our own to keep the guidelines and standards for waste management at the Federal level as reasonable and practicable as possible. To enable us to do this, the Environmental Committee of the National Milk Producers Federation decided that it was necessary to prepare an animal waste management questionnaire to be distributed within the membership of the Federation. In developing such a questionnaire, it became apparent that such information would also be useful to the Economic Research Service of the U. S. Department of Agriculture, provided that such information and the identity and source of such information, was kept absolutely confidential. ERS intends to utilize the information to conduct an economic impact study. Within the last several weeks, we have made distribution of the questionnaire and hopefully, after the results are tabulated, the Federation will have valuable and accurate information on the present status of animal waste management on dairy farms nationally.
Nevertheless, the guidelines and criteria for animal waste management now under development by EPA will eventually become the criteria upon which compliance with conditions of the permits will be based. Thus, as it becomes necessary to obtain a permit, it also inherently becomes necessary for one to meet the guidelines and standards prescribed under the permit and the basic minimums will be the Federal guidelines now under development. States, of course, can add to these guidelines and provide other restrictions and requirements, but in all likelihood they will not be permitted to delete from the basic minimum requirements established by EPA.

In order to examine the kinds of problems that are of concern to EPA, we can take a look at the basic format of the dairy farm waste management questionnaire which we have distributed and which many of you will be asked to complete with your fieldman as part of the cooperating effort with the National Milk Producers Federation.

REVIEW QUESTIONNAIRE

Compliance

Assuming then that one definitely does have a discharge of waste directly into a waterway from your confined livestock operation and it is evident that the discharge is polluting the waterway, then in all likelihood you should proceed to restrict the discharge from such sources. Programs for livestock waste management activities vary from state to state, but most local county extension offices have information available on present guidelines for livestock waste control. You should obtain from your state pollution control regulatory agency, which will be administering the permit program, their current regulations. It is likely hearings are contemplated in terms of revising existing regulations. The next step might be to contact the Soil Conservation Service and obtain consultation with a registered Soil Conservation Service engineer to determine what possibly must be done in the way of runoff prevention control measures from your open lots.

It is probably best, also, that you make sure you contact or notify the agency in the state or the local health agency that has jurisdiction over Grade A sanitary regulations covering your operation to determine if your proposed waste management plan might in any way conflict with the Grade A milk regulations being enforced in your area. Certainly your fieldman can be of some assistance to you in these matters. We have been cognizant for some time of the problems which potentially could be encountered with present Grade A milk regulations when it comes to developing waste handling and retention facilities. In order to hopefully mitigate as much as possible conflicting problems in this area, Congress saw fit to incorporate into the new Water Pollution Control Act, Section 514, dealing with agricultural facilities. The report of the House Public Works Committee reads as follows: "The production of milk and other agricultural products normally requires an operator first to obtain a license from the health authority regulating such operations within his state or locality. The health codes generally require removal of all animal wastes on a regular basis so as to
avoid the accumulation of manure and thereby minimize the breeding of insects and rodents." In Conference, a substitute amendment was offered and Section 514 of the Conference substitute report provides "that the agency issuing a permit under Section 402 shall assist the applicant for the permit in coordinating the requirements of this Act with the requirements of the appropriate public health agency.

Having developed approved Soil Conservation design plans for your waste system, then in most circumstances it would be appropriate for the operator to send his plans to the permitting agency and then the permitting agency approves plans and returns them to the operator. The operator then usually arranges for layout in accordance with plans and engages contracts or builds with his own equipment. The operator traditionally has the Soil Conservation Service or registered engineer certify that the construction follows original plans and specifications. Before REAP was terminated, it was mandatory that SCS approve such plans for cost-share assistance. The operator would normally send such certification to the permitting agency. The "permitting agency" would then send the operator a permit. The operator then operates and manages waste control facilities in accordance with the recommended practices.

This, generally outlines the kind of procedure which normally is followed to gain compliance with existing state rules and regulations affecting animal waste management. In addition, the Northeastern Dairy Practices Committee has developed guidelines for handling dairy manure as a solid and as a liquid. Copies of these guidelines are available from the Northeast Dairy Practices Headquarters, 118 Stocking Hall, Ithaca, New York, 14850.

In conclusion, permit regulations for agriculture will soon be issued by EPA. Those operators with 700 or more dairy cattle at one site or location will be required to file for a Federal permit on or before, or soon after, April 16, 1973. As effluent limitation guidelines are developed according to the schedule prescribed in the new law, such guidelines for waste management will become the basis for the states to issue permits to operators within their jurisdiction once the state permit program is itself approved by the Federal Environmental Protection Agency. Guidelines and standards of enforcement and compliance developed at the Federal level, then, will become the criteria upon which permits will be issued. The decision as to exactly when an operator must file for a Federal permit if he falls under the Federal cut-off level, will be left up to the discretion of the individual states. They can go beyond Federal requirements but they must meet the Federal minimum regulations and standards.

One last comment which I have saved for last, so that I might impress upon you the significance of this particular point -- The Environmental Protection Agency, I believe, finds itself in a very difficult position in administering this permit program for agriculture. You must realize that the agency has been placed in an awkward position of administering a permit program for agriculture which was designed to regulate industrial sources of pollution. The Congress stipulated the Feedlots Industry as one of the 27 basic industries to be covered by the new law. I also believe that people in responsible positions within EPA have come to realize the great differences and problems they will encounter if they apply a permit program broadly to agriculture, as opposed to applying the permit program...
to heavy industry. At the same time, we have a phenomenon occurring whereby environmental groups and consumer groups are watching every action and movement of EPA in terms of administering the Act in accordance with the exact letter of the law. They are being very "sticky" on details, procedures and mechanics of administering the Act. Thus, I think we can be reassured, somewhat, that the EPA administrative decision to limit the impact of the permit program to agriculture, at least initially, was based on the fact that the real purpose and intent of the permit program was to control major industrial sources of pollution on a priority basis. This, coupled with the fact that EPA does not have the manpower to administer a broad application of the permit program in agriculture which could entail review and evaluation of many thousands of permit applications if the cut-off level numbers were lowered at this time.

I think in order to counter the pressures being brought upon EPA by environmental groups, it becomes necessary for the agriculture community to provide as much assistance to EPA as possible to bring about practical and realistic regulations which accomplish the objectives contemplated by Congress.

Thank you and I will now attempt to answer any questions you might have.
A. Farm Location

1. County ____________________________ (office codes)
2. State ______________________________ (office codes)

B. Inventory of Livestock:

1. How many head of dairy cattle do you have on your farm at this time?

   - milking cows  ________________________________ 01 ______
   - dry cows  ________________________________ 02 ______
   - dairy replacements  ________________________________ 03 ______
   - Total  ________________________________ 04 ______

2. What other livestock do you have on your farm?

   - farrowing sows  ________________________________ 05 ______
   - feeder pigs  ________________________________ 06 ______
   - beef cattle or dairy cattle raised for beef  __________ 07 ______

C. Description of Livestock Lots

If you have any outside barnyards, exercise lots or open lots in which livestock is confined for any part of the year, answer the following questions. Do not include pasture. If all livestock is completely confined under roof all year and have no access to outside lot, go to Section D. Use a column for each separate lot whether lots are on the same farmstead or on separate farmsteads.

1. What class or classes of livestock primarily use each outside lot?

   (Enter appropriate livestock code(s) for each lot)  

   (01) milk cows  (04) sows
   (02) dry cows  (05) feeder pigs
   (03) dairy replacement  (06) beef cattle

   Outside Lot No. 1  2  3  4

-16-
2. For all outside lots, how far is the nearest continuously flowing stream or lake from the lot? --

3. How far is it from the boundary of your farm to the nearest:
   (01) Park, picnic, or other public area-----
   (02) Farm residence ------------------------
   (03) Nonfarm residence ---------------------
   (04) Group of 10 or more nonfarm residence --
   (05) Lake or reservoir used for recreation --
   (06) Does not apply ------------------------

4. What is the size of each lot?
   Length (ft.)-----------------------
   Width (ft.)------------------------
   (Office Use)------------------------

5. What is the surface of the lots?
   (01) dirt (03) manure pack
   (02) paved (04) part dirt & paved

6. What is surface slope of lots?
   (01) flat (03) $5^\circ - 10^\circ$
   (02) $2^\circ - 5^\circ$ (04) Over $10^\circ$

7. Is all runoff water from land above the lot diverted away so that it does not flow through the lot? Yes = 1 No = 0 ----------

8. Is all rainwater from roofs of buildings adjacent to outside lot diverted away by spouts and/or gutters so that water does not flow through the lot? Yes=1 No=0----------
9. As a result of heavy rain or spring thaws, what happens to the runoff water from the surface of the outside lots? (choose the one most applicable alternative for each lot.)

(1) Enters a continual flowing drainage ditch, stream, creek, canal or river that runs through the lot itself.

(2) Directly enters any surface waters (stream, farm pond, lake, reservoir or any other surface bodies of water) that directly border on part of the lot itself.

(3) Enters any surface waters through a dry ditch, grassway and/or any surface tile inlet. (Runoff actually reaches surface water at least once each 10 years.)

(4) Drains into an adjacent field (field does not have surface tile inlets but is tilled below surface) and seeps into the soil (surface runoff could never actually be expected to reach any surface waters during a 10 year period.)

(5) Drains into an adjacent untiled field, dry ditch or grassway and seeps into the soil (runoff could never actually be expected to reach any surface waters during a 10 year period.)

(6) Drains into a detention pond, settling basin or lagoon where runoff is collected and kept from entering a drainage ditch, stream or lake or other surface waters.

Instructions: If alternatives (4), (5), (6) above in question C-9 apply to all lots under your control, go to Section E, unless you have some definite reason to believe you will have to construct some rainwater runoff collection facility. If so, continue to Section D.
D. Construction of Water Collection Facilities

(Questions in this section apply to alternatives (1), (2), (3), question C-9 on preceding page.)

1. In order to construct detention pond, settling basin or lagoon on your property to collect rainwater runoff before entering any surface waters, would you:

(01) Have adequate space between lot and the surface water(s) present such as stream or lake

(02) Have adequate space by refencing

(03) Have to move lot

(04) Have to move barn and lot (There is no space available given the layout of farmstead to construct runoff detention facilities at existing lot site)

(05) Other situations (If checked, explain briefly.)

2. What is the distance (feet) to the water table at the site where a detention pond, settling basin, and/or lagoon would be located to collect runoff from your outside lot(s):---------------------------

(If exact distance is unknown, give best approximation from experience with well.)

3. What is the soil type at each site requiring a detention pond, settling basin, and/or lagoon? ---------------------------

(01) Sand  (03) Sandy Loam

(02) Loam  (04) Clay

(05) Other (identify) ________________________________

4. If you have more than one lot, are they located so that runoff from all of them can be collected in one pond or lagoon system? Yes=1  No =0-----

If no, how many separate ponds or lagoons would be required to collect runoff from all lots?---------------------------

(If unknown, give your best estimate from layout or drainage of your lot area.)
2. Assume it would be necessary to invest in additional facilities and equipment to comply with animal waste control regulations. Below is a list of 5 actions which you might consider, depending on the level of investment. Choose the action that you (or your landlord, if applicable) would most likely take if the total investment per head of dairy cattle was: (Assume the cost is above any cost-sharing with REAP.)

NOTE: Read entire question and each alternative before you mark any answer.

If the prospect of investing this much more per cow in my present system would be:

<table>
<thead>
<tr>
<th>Less than</th>
<th>$15</th>
<th>$16-$25</th>
<th>$26-$50</th>
<th>$51-$75</th>
<th>$76-$100</th>
<th>$101-$150</th>
<th>More than</th>
</tr>
</thead>
</table>

Then, I would choose the following alternative action from the list below. (Enter one code per box. Fill each box with appropriate choice. You should fill each box with the most appropriate code to satisfy the computer.)

(01) Install necessary diversion and collection facilities.
(02) Make a major change in my dairy operation such as converting to a totally confined housing system complete with manure storage facilities necessary to eliminate outside lots and daily manure spreading.
(03) Relocate operation to another site or farm where costs might be lower to comply.
(04) Discontinue dairy farming.
(05) Other (Briefly explain) ________________

3. If you continue dairy farming and made necessary pollution control improvements, would you increase herd size? Yes=1 No=0

4. If financing is needed, other than cost-sharing, which would you likely use to make pollution control improvements? (Fill in code of alternatives.)

(01) Local Bank
(02) PCA
(03) Federal Land Bank
(04) Insurance Co.
(05) Individual
(06) Other (specify)
5. What percentage of total agricultural product sales from your farm is from the dairy enterprise, including dairy products, dairy calves and cull cows.-----------------------------

H. Inventory of Manure Handling and Storage Equipment

How many items of manure handling and storage equipment do you own, rent, or have access to on this farm? (From the list below, enter the total number of each item. If none, enter 0.)

<table>
<thead>
<tr>
<th>Equipment Description</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tractor - less than 65 HP</td>
<td>01</td>
</tr>
<tr>
<td>Tractor - 65 or more HP</td>
<td>02</td>
</tr>
<tr>
<td>Manure spreader (solid)</td>
<td>03</td>
</tr>
<tr>
<td>Manure spreader (liquid)</td>
<td>04</td>
</tr>
<tr>
<td>Mechanical manure scraper</td>
<td>05</td>
</tr>
<tr>
<td>Tractor-mounted scraper</td>
<td>06</td>
</tr>
<tr>
<td>Tractor-mounted manure loader</td>
<td>07</td>
</tr>
<tr>
<td>Gutter cleaner</td>
<td>08</td>
</tr>
<tr>
<td>Manure carrier</td>
<td>09</td>
</tr>
<tr>
<td>Mechanical stacker</td>
<td>10</td>
</tr>
<tr>
<td>Agitating pump (liquid storage)</td>
<td>11</td>
</tr>
<tr>
<td>Soil injector (attachment for liquid manure spreader)</td>
<td>12</td>
</tr>
<tr>
<td>Irrigation system (for emptying storage tank, holding pond or lagoon)</td>
<td>13</td>
</tr>
<tr>
<td>Insect sprayer</td>
<td>14</td>
</tr>
<tr>
<td>Aerator (lagoon or oxidation pond)</td>
<td>15</td>
</tr>
<tr>
<td>Pump (for emptying holding pond or lagoon)</td>
<td>16</td>
</tr>
</tbody>
</table>

I. Comments: ____________________________________________

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
THE AVAILABILITY AND USE OF CAPITAL ON DAIRY FARMS

by
Clinton W. Charter
Southern New England Farm Credit Service

I welcome this opportunity to discuss with you today a subject that I have been interested in and have worked on for the past ten years, and that is capital investment on dairy farms.

The management level needed to run today's dairy farm profitably has increased substantially in the past few years, and I am sure will increase at a more rapid rate in the future. In the past a dairyman with high production per unit could make a reasonable profit in the dairy business. The dairy farmer of tomorrow will have to be a keen production manager, labor manager and money manager, in other words a good businessman if he is going to be the operator of a profitable dairy farm.

Capital Investment Mismanagement

One of the weakest links in the management of today's dairy farm is the mismanagement of capital. While there are many reasons for this statement I will cite two examples: First there is very little planning that goes into the capital investment decision making process. While working for the Charles H. Hood Foundation I made over 40 annual cash flow projections for dairymen. The item that was always underestimated was capital purchases. For 41 farms, capital purchases exceeded projections by 60%, or projected versus actual of $12,672 versus $20,246. Secondly, in my work with Farm Credit I see many examples of capital investment mismanagement. Less than a month ago a young dairyman, with purebred cattle, a herd average of over 15,000 lbs. per cow, and one of the best conventional set ups in the area, was forced to have an auction and sell out. The result: assets did not cover liabilities. The major reason for the sale was too much investment in all new equipment, the purchase of too many high priced cows, without adequate cash flow generated to handle the overhead and provide a reasonable level of profit.

Skyrocketing Need for More Capital

The major categories of investment on dairy farms are land, buildings, equipment and livestock. Because of the rapid increasing size of business and the effects of inflation the total capital investment and needs for capital have skyrocketed. For example, over 500 dairy farms analyzed in the Dairy Farm Management Summary from Cornell show total investment increasing from $127,842 to $153,305 or 20% for the 2 year period January 1, 1970 through January 1, 1972. The eight farms that were enrolled in the Hood Foundation Project for three years increased total capital investment from $143,000 to $196,000 or a 37% increase. If the various studies such as the Cornell 1985 projection or the Michigan 1980 projection are correct, the trend of more capital invested on dairy farms will continue in the future.
The Effects of Increased Capital Use on the Business

How do these increases in capital investment effect the farm business? In order to more clearly understand the changes that take place I have selected an actual farm case for which I have 5 years information.

This dairyman and his wife owned a large farm with a conventional barn that held 70 milkers. The labor force included the operator and one hired man. The rolling herd average was nearly 15,000 pounds per cow. In 1968 this dairyman decides to build a new 120 cow free stall barn and expand his business. Table 1 shows the changes in capital invested from 1968 to 1973. On January 1, 1968, $124,162 was invested in the business. Liabilities were $37,342 (real estate intermediate and dealer credit) with owner equity (net worth) of $86,820. Five years later, January 1, 1973, using constant values for land, livestock and supplies, and cost less accumulated depreciation for buildings and equipment the total capital invested had increased to $303,270 or a $179,108 increase. 69% of the increase in capital invested was for buildings and equipment while additional land purchases only accounted for 7.3% of the increase. During the same five year period, liabilities increased to $121,045 and net worth increased to $182,225. While the net worth statement shows the net results of capital investment, how much new capital was invested during this period? Table 2 summarizes the capital purchases, made from 1968 through 1972, $240,369 was invested in the business. This capital was generated from gross profits and borrowed capital from the normal credit sources. While the total investment increased 144%, gross volume of business increased 95% with gross profits increasing from $27,955 to $41,855. Gross profits are used to service debt, additional investment in the business and family living.

The effect of this tremendous increase in capital invested on the other economic ratios of the business is shown in Table 3. Owners equity decreased 14%. This is usual when the business is expanding at a more rapid rate than earned operating capital will provide. The larger the business the more dependent on borrowed capital. Total investment per cow increased from $1,774 to $2,527. This is the result of not increasing the size of the operation in proportion to the added capital investment. This is a major problem with many expanding dairy farms. Cow numbers are not increased sufficiently to carry the added overhead. Many times, dairymen decide how many cows they will have before they determine how much the added capital investment will be and whether it is practically feasible to increase herd size adequately to increase profit. The large change in machinery investment per cow indicates as the business gets larger there is more dependence on equipment. There is a substantial substitution of capital for labor.

Repayment Ability

The often used standard for reasonable debt load on dairy farms is $1,000 per cow. However, this is a poor measure of debt repayment ability for a given farm. The standard does not take into consideration the production level of the farm nor the terms of repayment. For example, consider two farms with an identical debt load of $1,000 per cow, one farm
has 20% of the debt on long term and 80% on short term with a production level of 13,000 lbs per cow. The second farm has the debt load split 50-50 between long term and short term with a production level of 15,000 lbs per cow. From this information you can see that while both farms have the same debt load per cow, their ability to service the debt is greatly different. A better rule of thumb to measure repayment ability is to express the total dollars available for principal and interest payment as a percent of gross income. This percentage then takes into consideration both the terms of credit and the production level of the herd. A maximum percent of gross income going to debt reduction would be 20% - 25%. Therefore, a dairy farm with $100,000 gross income could realistically pay up to $20,000 to $25,000 in principal and interest payments.

Measuring Capital Investment Efficiency

Periodically (at least annually) all dairy farms should measure the financial progress of their business and determine the return on their own investment (owners equity) in the business. Two tools used to analyze the efficiency or productivity of the capital invested in the business are the Net Worth Statement and Return on Net Equity.

A Net Worth Statement is an inventory of the dollars invested in the business in land, buildings, equipment, livestock, feed and supplies and miscellaneous investments such as cooperative revolving funds, accounts receivable, cooperative stocks, etc., less the total liabilities (outside credit against the business both long term, short term and dealer credit). The residual is the owner invested capital in the business. By using constant values for land, livestock and supplies, and cost less accumulated depreciation for buildings and equipment, the earned increase or decrease in owners equity can be measured. Also the shifts in the capital investment are important, such as the previous example more capital being invested in equipment and buildings.

To determine the rate of return on owners equity, a Net Worth Statement and Operating Statement are needed for the same period of time. The total cash generated by the business (milk sales, calves, culls) less operating expenses (including interest on borrowed capital) depreciation and a value for owners management; the residual is the dollars of return on equity. Dividing the residual by the beginning of the year net worth results in the percent return on owners equity. The example in Table 4 results in a 11.4% return on owners equity.

The Availability of Capital

The availability of credit to finance the increasing capital needs of today's dairy farmer is not a limiting factor. The Farm Credit Act of 1971 made changes in the Farm Credit System that make it possible to loan the progressive, profitable dairy farm all the capital that is necessary. The limiting factor is the ability of the owner to manage his investment profitably to meet minimum repayment requirements. In the future permanent type of financing will play an increasing role in financing the capital needs of the business. As the total capital investment continues to increase it will become more difficult to finance new entries into the dairy business and more complex in transferring the farm business from one generation to the
next. It would seem unreasonable to expect each generation to pay for the farm unit completely in a lifetime. I am sure the next speaker will be discussing this problem in considerable depth.

**Upgrading Business Management Ability**

Looking to the future, today's dairy farmers management ability will have to be upgraded if he is to meet the challenges of managing the capital investment that will be needed to run a profitable business. He must become more business oriented and less production oriented. The traditional educational institutions, the universities and the extension services will have to shift from production oriented courses and programs to capital and labor management programs if they are to play a major role in upgrading management ability. New tools and services will be developed to assist farmers to increase profits. The crisis of mis-management of capital will need to be solved if dairying is going to continue as a profitable agriculture enterprise.

**Conclusion**

1. Capital needs on the dairy farm of the future will continue to sky-rocket upward.

2. With changes in lending procedures and policies lending institutions will meet the challenge of providing adequate credit to meet the increased capital needs of tomorrow's dairy farmer.

3. The problem of mis-management of capital must be solved if dairying is to continue as a strong and profitable agriculture enterprise.
<table>
<thead>
<tr>
<th>Assets</th>
<th>1-1-68</th>
<th>1-1-73</th>
<th>Change</th>
<th>% of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$51,000</td>
<td>$64,000</td>
<td>$13,000</td>
<td>7.3</td>
</tr>
<tr>
<td>Buildings</td>
<td>10,000</td>
<td>86,748</td>
<td>76,748</td>
<td>42.9</td>
</tr>
<tr>
<td>Machinery</td>
<td>12,000</td>
<td>59,032</td>
<td>47,032</td>
<td>26.2</td>
</tr>
<tr>
<td>Livestock</td>
<td>31,575</td>
<td>56,925</td>
<td>25,350</td>
<td>14.2</td>
</tr>
<tr>
<td>Feed &amp; Supplies</td>
<td>15,087</td>
<td>19,720</td>
<td>4,633</td>
<td>2.6</td>
</tr>
<tr>
<td>Receivables</td>
<td>4,500</td>
<td>10,000</td>
<td>5,500</td>
<td>3.0</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>--</td>
<td>6,845</td>
<td>6,845</td>
<td>3.8</td>
</tr>
<tr>
<td><strong>Total Investment</strong></td>
<td>$124,162</td>
<td>$303,270</td>
<td>$179,108</td>
<td>100.0</td>
</tr>
<tr>
<td>Liabilities</td>
<td>$37,342</td>
<td>$121,045</td>
<td>$83,703</td>
<td></td>
</tr>
<tr>
<td><strong>Net Worth</strong></td>
<td>$86,820</td>
<td>$182,225</td>
<td>$95,405</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 2. FIVE YEAR CAPITAL PURCHASE ANALYSIS

<table>
<thead>
<tr>
<th>Year</th>
<th>Capital Purchases</th>
<th>Capital Sales</th>
<th>Net Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>$66,541</td>
<td>$2,389</td>
<td>$64,152</td>
</tr>
<tr>
<td>1969</td>
<td>31,965</td>
<td>8,546</td>
<td>23,419</td>
</tr>
<tr>
<td>1970</td>
<td>33,158</td>
<td>9,799</td>
<td>23,359</td>
</tr>
<tr>
<td>1971</td>
<td>37,617</td>
<td>10,855</td>
<td>26,762</td>
</tr>
<tr>
<td>1972</td>
<td>71,088</td>
<td>12,304</td>
<td>58,784</td>
</tr>
<tr>
<td>Total</td>
<td>$240,369</td>
<td>$43,893</td>
<td>$196,476</td>
</tr>
</tbody>
</table>

### FIVE YEAR INCOME ANALYSIS

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross Income</th>
<th>Operating Expense</th>
<th>Gross Profit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>$69,766</td>
<td>$41,811</td>
<td>$27,955</td>
</tr>
<tr>
<td>1969</td>
<td>99,143</td>
<td>63,627</td>
<td>35,516</td>
</tr>
<tr>
<td>1970</td>
<td>118,280</td>
<td>75,014</td>
<td>43,266</td>
</tr>
<tr>
<td>1971</td>
<td>129,962</td>
<td>84,154</td>
<td>45,808</td>
</tr>
<tr>
<td>1972</td>
<td>136,423</td>
<td>94,568</td>
<td>41,855</td>
</tr>
</tbody>
</table>
**TABLE 3. ECONOMIC RATIO ANALYSIS 1968 VERSUS 1972**

<table>
<thead>
<tr>
<th></th>
<th>1968</th>
<th>1972</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Assets*</td>
<td>$124,162</td>
<td>$303,270</td>
<td>144</td>
</tr>
<tr>
<td>Total Liabilities*</td>
<td>$37,342</td>
<td>$121,045</td>
<td>224</td>
</tr>
<tr>
<td>Net Worth*</td>
<td>$86,820</td>
<td>$182,225</td>
<td>110</td>
</tr>
<tr>
<td>Owner's Equity*</td>
<td>69.9%</td>
<td>60.0%</td>
<td>-14</td>
</tr>
<tr>
<td>Lbs. of Milk Sold</td>
<td>1,070,957</td>
<td>1,684,981</td>
<td>57</td>
</tr>
<tr>
<td>Milk Income</td>
<td>$66,078</td>
<td>$121,939</td>
<td>85</td>
</tr>
<tr>
<td>Gross Income</td>
<td>$69,766</td>
<td>$136,423</td>
<td>95</td>
</tr>
<tr>
<td>Operating Expense</td>
<td>$41,811</td>
<td>$94,568</td>
<td>126</td>
</tr>
<tr>
<td>Milking Cows</td>
<td>70</td>
<td>120</td>
<td>71</td>
</tr>
<tr>
<td>Investment/Cow</td>
<td>$1,774</td>
<td>$2,527</td>
<td>42</td>
</tr>
<tr>
<td>Machinery Investment/Cow</td>
<td>$171</td>
<td>$492</td>
<td>188</td>
</tr>
<tr>
<td>Debt/Cow</td>
<td>$533</td>
<td>$1,008</td>
<td>89</td>
</tr>
<tr>
<td>Repayment as % of Gross Income</td>
<td>17.4%</td>
<td>13.2%</td>
<td>-24</td>
</tr>
<tr>
<td>Income/Cow</td>
<td>$997</td>
<td>$1,137</td>
<td>14</td>
</tr>
<tr>
<td>Expense/Cow</td>
<td>$597</td>
<td>$788</td>
<td>32</td>
</tr>
<tr>
<td>Gross Profit/Cow</td>
<td>$400</td>
<td>$349</td>
<td>-13</td>
</tr>
<tr>
<td>Return on Equity</td>
<td>16.8%</td>
<td>11.4%</td>
<td>-32</td>
</tr>
</tbody>
</table>

* January 1, 1968 and January 1, 1973
<table>
<thead>
<tr>
<th>NET WORTH</th>
<th>Beginning of Year</th>
<th>$151,307</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Sales</td>
<td></td>
<td>118,280</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>$75,014</td>
<td></td>
</tr>
<tr>
<td>Management Value</td>
<td>11,828</td>
<td></td>
</tr>
<tr>
<td>Interest on Debt</td>
<td>7,493</td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>6,629</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>100,964</td>
</tr>
<tr>
<td>Gross Return on Net Equity</td>
<td></td>
<td>$17,316</td>
</tr>
<tr>
<td>Percent Return on Owners Equity</td>
<td></td>
<td>11.4%</td>
</tr>
</tbody>
</table>
TAX CONSIDERATIONS IN ESTATE PLANNING

by
Verle Houghaboom
Extension Economist
University of Vermont

Introduction

Taxes have become a major consideration in estate planning. The reason taxes have assumed so much importance is fairly obvious when one thinks about it. Changes in tax regulations have not kept pace with changes in property values. For example, the estate tax exemption is $60,000, just as it has been for many years. On the other hand, property values have changed a great deal. Land values in particular have doubled and redoubled — and then redoubled again and again. Land that cost from $15 to $50 an acre 20 years ago now sells for $500 to $1,000. In special locations, the price may be $2,500 an acre or more — even in large parcels. This means that a family owning a 300-acre farm where the land alone may be worth from $100,000 to $300,000 faces a potentially large tax in transferring their property to their children. This often comes as a shock to people who may never have had as much as an uncommitted $1,000 in their whole life.

Five Points to Remember

There are five points that should be kept in mind in planning the transfer of farm property:

1. Method of Transfer Determines Tax Cost
2. Method of Transfer Determines "Basis"
3. Lifetime Gifts Save Taxes
4. A Divided Estate Saves Taxes
5. Minimizing Taxes is Just One Consideration in Planning Property Transfers

Time is limited so we'll take a very brief look at the first, second, and last points. Because gift and estate tax regulations are extremely important in determining the tax cost of property transfers, and because there is so much misinformation in this area, I'd like to spend most of our time on points 3 and 4. I would appreciate your questions as we go along.

1. Method of Transfer Determines Tax Cost

Sale (Trade) — income tax
Gift — gift tax
Bequest — estate tax
Combination — all taxes, some, or none
2. Method of Transfer Determines "Basis"


Sale - basis is cost
Gift - receiver takes giver's basis
Bequest - inheritor's basis is fair market value (adjusted)

When transfer involves both sale and gift, consider selling low basis property (raised cows) and giving high basis property (new machinery).

5. Minimizing Taxes Just One Consideration in Planning Property Transfers

Common objectives:
(a) Security for parents, dependents
(b) Equity
(c) Maintaining farm as going concern
(d) Minimize taxes - most complex, least understood

3. Lifetime Gifts Save Taxes

Lifetime gifts are usually much cheaper taxwise than gifts at death. One reason, gift tax rates are 75 percent of estate tax rates. Further, provisions concerning computation of the tax and exemptions favor lifetime gifts.

All outright gifts of value, including farmland, buildings, machinery, and livestock, are subject to federal gift tax with the following exclusions:

1) Annual exclusion of $3,000 per beneficiary ($6,000 if given jointly by husband and wife, and it doesn't matter who really owned the property).

2) A total lifetime exemption of $30,000 per donor ($60,000 if given jointly by husband and wife). This may be spread over a period of years or taken all at once.

3) Gifts to charitable, religious, or educational organizations.

4) Marital deduction of one-half the value of gifts made to a spouse (thus $66,000 may be given tax free to wife - $33,000 marital deduction + $30,000 lifetime exemption + $3,000 annual exclusion).

Note: The "annual exclusion" is in addition to the total lifetime exemption.
The gift tax computation is unusual. The more gifts a person has made in other years and during prior quarters of the current year, the higher the tax rate will be on gifts of the current quarter (Table 1). To determine the current tax, using graduated rates, you must know the amount of gifts made in previous years (since 1932, when the gift tax started) and in prior quarters of the current year. The gifts of the current quarter are considered to be on top of the pile of all the gifts previously made.

To compute the tax on this quarter's gifts:

1) A tax is computed on all the taxable gifts from 1932 to the end of the current quarter, and

2) A tax is computed on all the taxable gifts from 1932 to the beginning of the current quarter.

3) The difference is the tax on the gifts made during the current quarter.

The federal gift tax return, if required, is due on or before the 15th day of the second month following the calendar quarter in which the gift is made.

### TABLE 1. Federal Gift Tax Rates

<table>
<thead>
<tr>
<th>(A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable gifts amounting to</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable gifts not exceeding</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax on amount in column (A)</th>
</tr>
</thead>
</table>

| Tax on excess up to amount in column (B) percent |

<table>
<thead>
<tr>
<th>$</th>
<th>5,000</th>
<th>10,000</th>
<th>20,000</th>
<th>30,000</th>
<th>40,000</th>
<th>50,000</th>
<th>60,000</th>
<th>100,000</th>
<th>250,000</th>
<th>500,000</th>
<th>750,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>5,000</td>
<td>10,000</td>
<td>20,000</td>
<td>30,000</td>
<td>40,000</td>
<td>50,000</td>
<td>60,000</td>
<td>70,000</td>
<td>100,000</td>
<td>250,000</td>
<td>500,000</td>
<td>750,000</td>
</tr>
<tr>
<td>112.5</td>
<td>375</td>
<td>1,200</td>
<td>2,250</td>
<td>3,600</td>
<td>5,250</td>
<td>7,125</td>
<td>15,525</td>
<td>49,275</td>
<td>109,275</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(rate schedule goes to $10,000,000)

---

**Federal Estate Tax**

**What Will Your Estate Include?**

The federal estate tax is levied on net taxable estate; that is on the gross estate less allowable deductions and exemptions.

GROSS ESTATE less DEDUCTIONS and EXEMPTIONS equals TAXABLE ESTATE

-34-
A. The GROSS ESTATE includes:

1. All property owned by decedent at death.

2. Life insurance proceeds payable to the estate.

3. Life insurance proceeds payable to beneficiaries if decedent had any incidence of ownership in the policy.

   Examples: the right to change the beneficiary; to cancel the policy; or to pledge the policy for a loan

4. The full value of property held in joint tenancy less any part which originally belonged to the survivor or which the survivor purchased from the decedent.

5. Property given away during life if the decedent retained a life estate.

6. Property given away during life if the decedent retained other interests, controls, or powers over the property.

7. Property over which the decedent had a power of appointment by which he could have taken the property for himself or given it to someone else.

8. The value of payments to a survivor under certain annuity contracts and retirement plans.

9. Property given away within 3 years of death if the gift was made in contemplation of death.

B. DEDUCTIONS from the gross estate include:

1. Funeral expenses, debts, unpaid taxes, estate administration costs, and casualty losses during the estate settlement period. The gross estate less these deductions equals the adjusted gross estate.

   Example: If the gross estate amounted to $300,000 and the expenses listed above amounted to $20,000, then the adjusted gross estate equals $300,000 - 20,000 = $280,000.

2. The marital deduction - an amount up to 50 percent of the adjusted gross estate but not more than the amount transferred to the spouse.

   Example: If the adjusted gross estate is $280,000 (as above) and the wife received at least one-half, then the maximum marital deduction is $140,000. If the wife received less than one-half the estate, the marital deduction would be correspondingly reduced.

3. Charitable deductions. Money or property left to charitable, educational, or religious organizations.
C. **EXEMPTION** from gross estate includes;

An exemption of $60,000 is allowed each estate. Thus, if the estate after all deductions is less than $60,000 there is no tax.

D. **TAXABLE ESTATE** includes:

The gross estate less all deductions and the $60,000 exemption equals the "taxable estate."

**Example:**

- $300,000 gross estate
- $20,000 deductions (administrative, funeral, etc.)
- $280,000 adjusted gross estate
- $140,000 marital deduction (assumes at least one-half of estate left to wife).
- $140,000 net after marital deduction
- $2,000 educational, charitable, or religious contributions
- $138,000 net after educational, etc., deductions
- $60,000 exemption
- $78,000 taxable estate

The taxable estate is subject to tax at graduated rates (Table 2). The gross estate tax on a taxable estate of $78,000 would amount to $14,540 ($9,500 + 28% of $18,000).

Note: If a decedent's adjusted gross estate is $120,000 or less and he leaves at least half to his wife, no estate tax would be due. ($120,000 adjusted gross estate, less $60,000 marital deduction, less $60,000 exemption equals 0 taxable estate.)

After the tax has been determined, certain credits are allowed which further reduce the tax. There is a small credit for part of the state death tax paid. A credit is also allowed for foreign death taxes paid.

Another credit is allowed if property is subject to estate tax more than once in 10 years. For example, if a father left property to a son on which estate tax was paid and the son died soon after, the son's estate would be entitled to a credit for the tax paid on the same property in the father's estate.

As noted above, property given away during life may be included in the gross estate and subject to estate tax. If a gift tax was paid on the lifetime gift, it is credited against the estate tax so that the property is not taxed twice.

The executor or administrator of the estate must file a preliminary notice (Form 704) if the decedent's gross estate is $60,000 or more. This form is due within 2 months after the decedent's death. The Federal Estate Tax return (Form 706) is due 9 months after the decedent's death. For details and exceptions see "A Guide to Federal Estate and Gift Taxation," IRS Pub. No.448.

4. **A Divided Estate Saves Taxes**

Maximum advantage of the marital deduction occurs when half of the estate is taxed on the death of the first to die and half on the death of the other. Why? Because with graduated tax rates, two half piles produce
TABLE 2. Computation of Gross Federal Estate Tax

<table>
<thead>
<tr>
<th>Taxable estate equaling</th>
<th>Taxable estate not exceeding</th>
<th>Tax on amount in column (1)</th>
<th>Rate of tax on excess over amount in column (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ -</td>
<td>$ 5,000</td>
<td>$ -</td>
<td>3 percent</td>
</tr>
<tr>
<td>5,000</td>
<td>10,000</td>
<td>150</td>
<td>7 percent</td>
</tr>
<tr>
<td>10,000</td>
<td>20,000</td>
<td>500</td>
<td>11 percent</td>
</tr>
<tr>
<td>20,000</td>
<td>30,000</td>
<td>1,600</td>
<td>14 percent</td>
</tr>
<tr>
<td>30,000</td>
<td>40,000</td>
<td>3,000</td>
<td>18 percent</td>
</tr>
<tr>
<td>40,000</td>
<td>50,000</td>
<td>4,800</td>
<td>22 percent</td>
</tr>
<tr>
<td>50,000</td>
<td>60,000</td>
<td>7,000</td>
<td>25 percent</td>
</tr>
<tr>
<td>60,000</td>
<td>100,000</td>
<td>9,500</td>
<td>28 percent</td>
</tr>
<tr>
<td>100,000</td>
<td>250,000</td>
<td>20,700</td>
<td>30 percent</td>
</tr>
<tr>
<td>250,000</td>
<td>500,000</td>
<td>65,700</td>
<td>32 percent</td>
</tr>
<tr>
<td>500,000</td>
<td>750,000</td>
<td>145,700</td>
<td>35 percent</td>
</tr>
<tr>
<td>750,000</td>
<td>1,090,000</td>
<td>233,200</td>
<td>37 percent</td>
</tr>
<tr>
<td>(rate schedule goes to $10,000,000)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10,000,000</td>
<td>-</td>
<td>6,088,200</td>
<td>77 percent</td>
</tr>
</tbody>
</table>

less tax than one whole pile. Further, each pile is reduced by the $60,000 exemption. Assume, for example, that a farmer who owned $300,000 worth of property left it all to his wife who, in turn, left it all to their children. The total federal tax on both estates would be $62,470 (column 1, Table 3). However, if the husband left half to his wife and half to his children and the wife left her half to their children, the total tax would be $27,848 (column 2). That is a tax savings of nearly $35,000.

All the property was included in the husband's gross estate (column 2, Table 3). But the marital deduction eliminated half from his taxable estate. This half will be taxed in the wife's estate. The other half (that part left to the wife in trust or left outright to the children) will be taxed in the husband's estate but not in the wife's estate. Thus, the two halves have been taxed separately for maximum tax savings.

Tax-Saving Principles

To summarize, the basic principles of tax-saving are not very complicated. Most tax-oriented estate plans will use some or all of these ideas:

1) Lifetime gifts to save income taxes by spreading income among additional taxpayers.

2) Lifetime gifts to save estate taxes by taking the property out of the estate at death.

3) Use of the estate tax marital deduction to pass half of the estate free of tax to a surviving spouse.

-37-
TABLE 3. Marital Deduction Results

<table>
<thead>
<tr>
<th>Item</th>
<th>(1) All Property to Wife</th>
<th>(2) One-half adjusted gross estate to wife&lt;sup&gt;a&lt;/sup&gt; (other half of estate in trust to wife or outright to children)</th>
<th>No Surviving Spouse&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross estate Deductions</td>
<td>$300,000</td>
<td>$300,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>Adjusted gross estate</td>
<td>280,000</td>
<td>280,000</td>
<td>280,000</td>
</tr>
<tr>
<td>Marital deduction</td>
<td>140,000</td>
<td>140,000</td>
<td>0</td>
</tr>
<tr>
<td>Net after marital deduction</td>
<td>140,000</td>
<td>140,000</td>
<td>280,000</td>
</tr>
<tr>
<td>$60,000 exemption</td>
<td>60,000</td>
<td>60,000</td>
<td>60,000</td>
</tr>
<tr>
<td>Taxable estate</td>
<td>80,000</td>
<td>80,000</td>
<td>220,000</td>
</tr>
<tr>
<td>Federal estate tax due on husband's estate</td>
<td>$15,100</td>
<td>$15,100</td>
<td>$56,700</td>
</tr>
<tr>
<td>Value of wife's gross estate</td>
<td>264,900</td>
<td>140,000</td>
<td>0</td>
</tr>
<tr>
<td>Deductions (admin., etc.)</td>
<td>16,000</td>
<td>8,400</td>
<td>0</td>
</tr>
<tr>
<td>Adjusted gross estate $60,000 exemption</td>
<td>248,900</td>
<td>131,600</td>
<td>0</td>
</tr>
<tr>
<td>Taxable estate</td>
<td>188,900</td>
<td>71,600</td>
<td>0</td>
</tr>
<tr>
<td>Federal estate tax due on wife's estate</td>
<td>$47,370</td>
<td>$12,748</td>
<td>$0</td>
</tr>
<tr>
<td>Total federal estate tax on both estates</td>
<td>$62,470</td>
<td>$27,848</td>
<td>$56,700</td>
</tr>
</tbody>
</table>

<sup>a</sup> Second half of estate in trust to wife or outright to children.

<sup>b</sup> Same effect if entire estate left in trust to wife, remainder to children. Differs from "two trust" will which separates estate into two taxable piles as in column 2.
Thursday, April 5, 1973

AFTERNOON SESSION - IMPORTANT ISSUES FACING COOPERATIVES.

A. The Financial Issue

The Growing Demand and Cost for Cooperative Services

How Can the Full Service Cooperative Finance Its Increasing Costs

B. The Communications Issue

Problems and Needs in Developing Internal Communications in the Regional Cooperative
I'm to talk on the growing demand and cost of cooperative services. Having been a part of the Executive Committee in prior years, which put the program topics and speakers together for this Northeastern Dairy Conference, I must admit the current committee has possibly mismatched the speaker with the topic. I did grow up on a dairy farm and I did clean out gutters and as one of the speakers talked about this morning, I may be more familiar with that than with the financial end of it. I am familiar with the financial problems. I don't know if I can enumerate all the services performed by cooperatives that fit into the growing demand category. But, since our main topic is the financial issue, I will attempt to pass along a few observations on the cost of services which are indeed growing. Your subsequent speaker, Stu Johnson, is slated to answer the question on how the full-service cooperatives can finance their increasing costs. And I might say that I am as anxious as you are to hear what he has to say on that subject.

In the mid 20's and early 30's hard on the heels of the passage of the Capper-Volstead Act, members, directors, and operating officials had to come to an understanding of what cooperatives were all about. They set about to work out by trial and error to develop organization and operational techniques which would make cooperatives effective agents of their farmer members. For the next 20 or so years they attempted to solidify their position and to grow on the basis of service performed for their members. They fought attacks from other business enterprises that threatened these new and different organizations. This is a never ending responsibility which demands almost constant attention. It continues today as we try to carry on our business. During this period people realized that their organizations existed only by the consent of the public. Through public relations and communications they did a pretty fair job of convincing the right people of the need for cooperatives in agriculture.

After World War II, cooperatives found themselves up against a technological revolution. Farming methods were being changed rapidly by science and technology. Cooperative dealings in the business sector were taking on a new thrust and their role in dealing with government programs was changed. They were concerned with both surpluses and shortages which gave them new and added responsibilities. Here we are in the decade of the seventies, just 50 years after the passage of the Capper-Volstead Act of 1922 in giving cooperatives a new lease on life. That 50 years was quite a growth period for cooperatives to be sure. In the current era we have had the advent of the new dairy cooperative. Names such as AMPI; Mid-America; Dairymen, Inc.; Milk, Inc.; PennMarva; and very recently Yankee Milk. Stu Johnson is going to talk about full service cooperatives. As I indicated in the beginning I'm not sure what is
expected of me to set the stage for a definite handle on full service. I have a notion maybe you may want me to talk about cooperative service to the market or you may want me to talk about a cooperative service to members. I don't know just what the committee had in mind.

If you think back just fifty years ago, it occurs to me that quite a few services were performed by cooperatives in their race for recognition, and responsibility in the market place. Reflecting on my own cooperative, the Maryland and Virginia Milk Producers Association in Washington which had its humble beginning in 1920, our growth has been in large measure the result of the services we have provided for our members and equally important for the services we provided for the buyers of our milk. On the membership side, our cooperative had uppermost as its basic purpose that of helping members make a profit in farming. We have always tried to keep ourselves market-oriented, producing and delivering the qualities and quantities that buyers want and will take. Where necessary and practical, we have gone into processing either in fluid milk or in the manufacturing end of the business. Now just to elaborate on some of these things already mentioned, things that might be of interest to you.

In the services performed by cooperatives, it was mentioned earlier this morning that the first prerequisite is to have a good manager. I am in a position to bring this out because I always try to convince our directors that this is what they need. So far I guess I have been successful. I think it is most important that you have good management and management teams in all phases and aspects of cooperative marketing—whether it is in the services that we perform for members or for the buyers of milk.

As far as legal services go, I guess we have as much experience as anybody else in trying to act within the law and at the same time to provide services to the market place and to our members. We have had our share of law suits, but we are not alone in this. I noticed that Dairymen, Inc. had one filed against them last week that was mentioned in the Wall Street Journal. We have encountered a number of legal problems in establishing the Maryland Virginia Cooperative as a factor in the market place. In becoming a part of the fluid milk business in a market, it is important to gain sufficient share of the market to have some control and this can lead to legal problems. This is what is being complained about in the new suit against Dairymen, Inc., and is what some other cooperatives have faced in suits that they have been involved in.

Next let me talk about the accounting services that we perform on behalf of our members and on behalf of the market. You heard about some new programs this morning. The Environmental Protection Program illustrates one of these. The program concerns sewage discharge as far as plants and farms. Plant safety programs is another new area. I was down in Virginia the night before last and listened to one of the fellows in the State Safety Agency there. With these new programs we don't know who's doing what and who's doing what to whom, whether it's a state or federal agency or both that we are dealing with. I put these programs under accounting. If you look at the forms that are required in meeting all the requirements of these laws and programs, it simply means that we are going to have to hire more people to fill out more forms to get back more information from the government to process. This seems to be a never ending process that is setting in. As a cooperative in this field we have to cope with this. We don't like all the
forms but I think all of us are interested in making sure we do right by the people in the market place. There are other services that I could mention under accounting such as servicing producer accounts and making advances to producers. What charges to put on these services, how you pay for them are problems. Overlapping quality control regulations have long been a problem. One of the satisfying things that I was thinking about in the dairy industry is getting rid of some of the overlap. I know that as far as our cooperative is concerned we have been through a long period of regulations and rules, laws, inspections at the farm and at our plants. At our manufacturing operation at one time we had about 19 or 20 required inspections to meet the different sales area qualifications. Hopefully, through coordinating committees and through organizations like the Northeastern Dairy Conference we have been able to talk about these problems over the years. I think we are making substantial headway in solving some of them and in reducing some of the costs, that we have as cooperatives.

Laboratory Services. We think we have everything refined pretty well as far as butterfat, bacterial and various other tests that we make on producer milk to insure quality. All of a sudden they come out with new milk testing equipment. In Boston they say they now have a new testing setup. We will have to look at that set up and see if it has application for us. It's much the same with the accounting that I just talked about. We develop an accounting system using the IBM 360 or 320 computer then they come out with a new system using new equipment and all of a sudden we get a request to get into this. I thought the old system did the job pretty well. You have to continually look at these new things to make sure you are keeping up with the situation as far as services you perform for producers and for buyers of milk in the market place.

Equipment and Supplies. We sell some million dollars worth of equipment and supplies to our producers and we make direct farm delivery of these to our producers. This brings in trying to maintain a fleet of trucks. Here again, I go back to the situations I mentioned earlier. The truckers are having problems now in cutting pollution on exhausts and in the safety aspects that they have to build into their systems.

Advertising and Public Relations. Fortunately, we have been able to take advertising out of the voluntary category in our market organization and more to advertising deductions through the federal order. This does create some problems in trying to communicate with people. The cost of advertising is going up, I guess as much and probably more than meat prices that you hear so much complaining about. It does take money to get our story across to the consumers and to the buyers of our products.

Research. Where are we on this? We now have a great setup as an adjunct to the United Dairy Industry Association as a vehicle for new product development. Hopefully, we will reap some benefits from that program. Like advertising, it calls for lots of money as far as what you can do with research. You can come out empty-handed.

To mention a few other services that may be performed by cooperatives on behalf of members. I happened to mention at a meeting this fall that our producers might want us to do something nice for them once and a while. At two or three of the meetings I brought up that if they might
want to take a tour to Disney World or Disneyland or overseas or any place we could probably get group rates and all go together and have a good time. The first question I got back from the audience was "You get a free trip out of it." So I stopped that right there. There will be no tours at this point.

We sent out a questionnaire to our producers to sample their interest in our providing hospitalization insurance to them. We had very little interest expressed by our members in our providing this type of service. Here again, we get into overlapping membership with other organizations that already provide this service to some of our members.

Then there is that big service we all are getting hit with that John Adams from the Federation spoke about this morning. That's keeping our air, water, and soil unpolluted. This is going to be a tremendous task for all of us to make sure that we come up with the right answers to these problems at a reasonable cost. When they started talking about $7-$9 per cow at the farm and you start adding to that the cost for handling our plant discharges, it scares you. I noticed this morning they were talking about plants tying in with municipal systems. At our manufacturing plant at Laurel Maryland we have our own sewage treatment system on a trial and error basis. At this point we are trying to get a permit. We think we won't have too much of a problem because we think we do have a good system. We spent nearly $400 thousand setting this up. We also built in our own water supply because we couldn't depend on the municipal supply. I think our better quality of life has brought on environmental pollution and it's been an unfortunate product of man's progress.

Communications. Keeping the members informed. This is another thing we talked about at our Executive Committee luncheon today and the benefits of the Northeastern Dairy Conference. When the conference started back in the early '40's communication wasn't good. Now we have a more sophisticated communication system with our members and with those people around us, so that it's not too many hours before somebody else knows what's going on if you want them to know. We're happy we combined our three organizations - Maryland Cooperative, Interstate Milk Producers and Maryland-Virginia groups - into our PennMarva setup. We combined our house organs into one magazine. I haven't told the other two managers this, but I think we saved about $3-$4 thousand last year in doing this. This is one of those things that a manager looks at, of course. I get some calls from producers that we don't have anything in the magazine anymore. I think it does a fairly good job of getting out to producers what's taking place in the market.

One of the other programs that we are enthused about is our youth program. This is a young cooperators setup and we hope we can move along and get some younger people interested in the dairy business. I reported to our membership a couple of weeks ago at our annual meeting that we are losing in the Maryland Virginia Cooperative about 50 producers a year and we have been doing this for the last 18 years. Eighteen years ago we had nearly 2,000 members and now are down to 1,100. That doesn't mean that we have lost that much milk. We still have a pretty good slug of milk. We do have larger production per farm. That is up to this year, we did. Since January 1973, our production has been down. Producers have had problems as far as feed prices and other costs are concerned. With rising costs, larger farms and larger investments, it's going to be pretty hard to convince young people to get into dairying unless we can maintain price levels so as to yield a favorable profit picture on the farm.
We had a meeting of our Planning and Operations Committee down in Virginia yesterday. This will give you an example of what we face as far as the increased costs of providing services. This is in terms of operating our manufacturing plant. We were fortunate this past winter in having a very open winter with not too much cold weather. The milk drying operation takes a lot of BTU's to make powder. We were notified by the people who supply our energy in this energy crisis we may very well get cut off from our natural gas supply as much as 15 days a month and maybe even more. In other words, we are on interruptible service and if we should get cold weather, homes will get first crack at the available supply of natural gas.

We checked into the idea of going to full service rather than relying on interruptible service. We found that we might not even be able to get full service, and if we did the unit cost would go from 48¢ to $1.60. You can see this runs into a considerable amount of money. This is exactly the problem we have to consider in planning what we can do to meet the energy crisis. This was discussed at our meeting yesterday. If our members are going as far as providing standby on power and energy on their farms, we think that we have to have standby capacity at our plant for 15 to 20 days operation. This would require three 30,000 gallon tanks of propane gas and this would cost about $65,000. This is a pretty good decision for a board of directors to make; yet it is necessary when you consider the alternatives. With the environmental limitations, farmers can't even dump their milk on the farm. It has to be dried somewhere. These things can get us into more costs in providing services for our producers and for the marketplace. I think this is a good example of full service operations on behalf of producers and on behalf of the market. This is in the same sense that you hear all of the advertising now of full service banks, full service insurance agencies and full service chambers of commerce. It seems you have to have everything available to you at a moment's notice. To provide all of these services we have a marketing fee of a cent a gallon or 11.6¢ per hundredweight. This is in addition to the service charges we receive from the buyers of our milk. This gives us a service fee for the procurement of milk, for quality maintenance and to balance those 4, 5, or 6 day bottling requirements or operations that have come into the picture. We take whatever milk is left over that the plants won't use.

We have grown as cooperatives over quite a span of time and we will continue to grow in the 70's and 80's. The cooperative of tomorrow must have a strong program of services and a communications program that will help members understand what is involved in the marketing of milk and will keep them informed on changing marketing practices. This will bring about a better understanding on the value of our cooperatives. As we develop and refine our cooperatives into better service establishments, it is my hope that all of us - Yankee Milk, Dairylea, Northeast, Eastern Milk, Inc., and Penn Marva - will conduct ourselves in such a way that our members realize value in favorable ratio to costs, whatever the costs may be. Thank you very much.
FINANCING INCREASING COSTS OF FULL SERVICE COOPERATIVES

by

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The problem of financing increasing costs is largely one of relative blend prices as between members of full service cooperatives and non-members. Members of a full service cooperative bear the brunt of price and income-improving activities in the market. The problem is that of being reimbursed for costs of these activities sufficiently so its blend price will compare favorably with that paid non-members, with a resulting attrition of the number of free riders through a steady increase in membership of the full service cooperative.

The problem is not a simple matter of obtaining higher blend prices under a federal order in the market, leaving relative blend prices of the full service cooperative at a disadvantage. If this were the problem, the easy answer would be to increase class prices - the Class I price, the Class II price, and perhaps the price of new additional classes.

Neither is the problem that of where to find increased capital funds - whether from a revolving fund, and, if so, of what type; whether from borrowing from banks, members or the general public; or whether in other ways. The precise way to obtain capital, and how much, is one of many important business decisions a full service cooperative must make. It is one of many business decisions where successful handling can contribute to efficiency and higher producer returns. But, choosing a particular financial procedure that is best is not the crux of the problem of financing increasing costs of full service cooperatives. Rather, the crux of the matter is the free rider problem of such cooperatives, and what can be done to alleviate or eliminate it.

What is the free rider problem? Full service responsible cooperatives provide a market for all producers in the market, every day of the year. They provide balancing services for fluid handlers. They manufacture unwanted surpluses, delivered irregularly, frequently at a loss. They have effective and costly programs for improving milk prices and dairy farmers' incomes. The cost of these services is not borne by non-members. The cost is not borne by members of limited service cooperatives. The membership of the full service cooperative tends to erode. The management of the full service cooperative, as a result, may decide to spend considerable time and effort on purely organizational problems. With this diversion of time and effort, the full service cooperative is not as efficient - nor as effective - as it otherwise could be.

Other people have a different choice of words for the free rider problem. George Mehren, general manager of the largest full service cooperative in the United States, and formerly Assistant Secretary of Agriculture, with
federal milk order responsibility, calls it the "tyranny of the few". In his annual membership report last September, Mehren said: "The biggest (external) trouble we have... might be called the tyranny of the few. This... is the source of our troubles with the government... They are saying that... if there is a small group who ride on the servicing and balancing of a big group... any action taken by the big group that may adversely affect the protected position of the tyrannical littlefew... is naughty and illegal. This (is also)... true in the market order program, which in this respect, at least, is some 30 years behind the times... We want (order) consolidations with (appropriate) zone prices and (location differentials) in some cases. We want specific allowance for the market services... we perform and the protected few ride upon. We want the same kind of generalized participation in promotion programs...". So you can use the harsher term "tyrant", or free rider, or free loader, or tailgater, or other. I prefer to use free rider.

I. What a full service cooperative can do itself

What helps most is to keep the cooperative's blend prices as high as possible relative to what the private deal can pay, and a two-way flow of information that brings loyalty of well-informed members, the feeling that "the cooperative is me."


Relative blend prices are in part a matter of business efficiency. At this, the full service cooperative can and does strive to "do its damnest", but whatever it does, there will always be pockets of special situations, changing from time to time, where the private deal will pay better. And the burden of price-improving activities not being shared by the free rider always gives the full service cooperative a handicap to start with.

2. Membership loyalty.

Business efficiency not being enough, what about membership loyalty as the glue that eliminates the free rider problem? Probably it is the best hope on the list of things that a full service cooperative can work on by itself. Recently it was reported that a dealer had canvassed producers in a Florida market. After being cordially received by the farmer, and having an extended discussion, the reported final comment by the farmer was about as follows: "I'm impressed favorably both by you personally, and by your business. I'd like to sell milk to you. On something as important as my profits as this, however, we producers have learned to leave the final agreement to our cooperative. So here is the name of the manager, his address, and his telephone number - and I certainly hope we can do business together." This is the type of loyalty, if found everywhere, that would solve almost completely the problem of financing increasing costs of full service cooperatives.

There are instances of such loyalty in Northeast markets as well as in Florida. Of 1,137 dairy farms in the Niagara Frontier Market in February 1973, 100% - all 1,137 - were cooperative members. Of 520 farms in the
Rochester Market that month, some 95%, all but 26, were cooperative members. Membership in both markets is either in what could be called full service cooperatives, or cooperatives that have considerable business relationships with full service cooperatives, four in number in the Niagara Frontier and two in Rochester.

Unfortunately, such loyalty, though frequent, is not widespread enough. To go no further afield than the State of Connecticut, there are many examples of steadfast loyalty. I will give but three, as follows: (a) In Litchfield County, the largest in milk production in the State, the response, time after time, to increased capital needs of full service cooperatives, has been: "Go ahead and make an extra deduction, and we'll stick with you, and, furthermore, while you're at it, deduct a little extra in case you've made too fine an estimate of your needs"; (b) The former president of the Connecticut Milk Producers Association was offered in his younger years several special deals of considerable magnitude, until his Florida-like responses discouraged any more; (c) A dairy leader whose blend price under dealer pooling was on the high side in the 1930's was the chief proponent of share-and-share alike in cooperative-wide pooling. Nevertheless, by way of contrast, some 60 to 70 dairy farmers in eastern Connecticut have left their full-service cooperatives for private deals since last July 1 when Yankee Milk was formed.

Producer loyalty, then, is an elusive thing. It can be broken by too great a strain - at 2¢ per hundredweight more easily than by 1¢, at 20¢ more easily than 10¢. It can be developed, but not surely, by cooperative programs associated with delegates, directors, management, and fieldmen. The possibility of loyalty has been enhanced by such factors as fewer, larger, and better-informed dairy farmers; more control of hauling by producer cooperatives; and fewer and larger proprietary handler outlets for dairy farmers. But it has been reduced by a lesser sense of community, and by a larger size of market. When the cost to others of becoming a free rider is borne by strangers far away, the temptation to become one is greater than if borne by neighbors seen every day. The old time "barn raising" spirit of helping out your neighbor even though from a short-run profit approach you might better stay at home was strongest when you knew your neighbors. Thus, producer loyalty alone won't solve the problem under discussion.

3. System of handling charges of the cooperative.

A revised system of handling charges related to costs of various services would attract a dealer buying from free riders only if his cost of milk was reduced relative to other dealers. The dealer's position is much like that of the full service cooperative, which finds relative blend prices the crux to the problem of financing increasing costs of services. He is interested in his cost of milk relative to that of competing dealers.

If a revised system is instituted bringing the full service cooperative greater revenue and the dealer does not buy from it, his pay price to free riders may or may not be increased by the same amount as the cooperative's blend. If the dealer does not pass through to producers enough in higher prices to maintain the same blend price relationships as before, the producer's incentive to become a free rider is diminished at the same time as the dealer's desire to buy from free riders is increased. The net result on the problem of financing increasing costs of a full service cooperative is difficult to predict.
Further discussion of handling charges will be presented under plans of governmental assistance under federal orders. Service charges outside a federal order have a small influence on the financing problem, but do not provide the major part of a satisfactory answer.


If a full service cooperative adopts a pooling plan for hauling rates, with the same rates for neighboring farmers, subject to differentials that make economic sense, such as those associated with volume of delivery, size of bulk tank relative to deliveries, and degree of isolation from other producers, some help is given to the problem under review. The help consists of making full service cooperatives less vulnerable to raids on their lowest-cost members— the large producers on main roads.

For such help to be obtained, the cooperative must organize and operate or control the hauling. Apart from the financing problem, doing this is desirable as one of the necessary ingredients of cooperative unity and strength in a market.

5. Other.

Other things a full service cooperative can do itself, outside a federal order, to help finance increasing costs are such strength-increasing actions as: (a) reaching agreement on terms of sale with most or all handlers; (b) writing the checks in paying all members; (c) having an attractive full line of associated membership services; and (d) having a strong membership contract.

II. How governmental programs can help

Even as a package, the foregoing suggestions will not be 100% effective in dealing with the free rider problem which hampers the financing of increasing costs of full service cooperatives. The following comments will turn to possibilities of government assistance, with as complete a listing as I can make, but with emphasis on charges for balancing services at fluid processing plants and on the pricing of last-resort uses of unwanted surpluses resulting from balancing.

1. Compulsory cooperatives.

Dairy farmers in some countries have given up the voluntary cooperative approach in marketing milk, and turned to compulsory cooperative membership under government auspices.

In Canada, producer participation in provincial programs is required of all dairy farmers, and all must contribute to their cost. Ontario, for example, moved in November 1965 to a Milk Marketing Board supported by and marketing milk for all dairy farmers. Costs of marketing, including balancing and surplus-handling, are shared by all farmers through the Board. Checks to farmers for their milk come directly from the Board.
In Great Britain, four Milk Marketing Boards have provided compulsory milk marketing cooperatives since the 1930's, one for England and Wales, and three for Scotland. The England-Wales Board operates some surplus handling plants, runs a milk advertising program, operates artificial breeding and record-keeping services for farmers, tests milk for nonfat solids and differentiates prices depending on these tests, controls and operates milk hauling from farms, presents the dairy farmers' case for favorable prices at an Annual Price Review by the British government, and performs many other functions. All farmers market their milk through the Board, pay its costs, and receive their milk checks from the Board.

A compulsory cooperative program has not been followed in the United States partly because of the difficulty of devising a single program for a large country, and partly because states have limited police powers and cannot control inter-state commerce in most of its aspects. Cooperatives have been looked on with favor, and encouraged as a part of national policy by special legislation. Given strong belief in the many advantages of a local voluntary system - greater flexibility, more freedom, less government control, and so on - turning to the British or Canadian system is not likely, at least not for many years. With adverse court decisions in present litigation, however, opinions might change.


The "free rider" vulnerability of voluntary cooperation has been recognized by introduction in Congress of a proposed "Dairymen's Bargaining Act". This would give the predominant cooperative the bargaining authority for all producers in the market, with cost-sharing arrangements. The proposed Act was developed by the National Milk Producers' Federation, but along with several other farm bargaining bills under consideration in 1971-72, failed to move beyond the Subcommittee on Domestic Marketing and Consumer Relations of the House Agricultural Committee. Federation Secretary Patrick Healy reported last November that "bargaining (legislation) faces a long, slow, hard process in Congress," and though hope remains for favorable action in the present Congress, most appraisals agree with Healy's.

3. Compulsory participation in promotion programs.

A less ambitious approach than a government-enforced compulsory contribution to the cost of all price-improving activities of full-service cooperatives has been compulsory contribution to its advertising, promotion, nutritional education, and new product research and development activities.

Maine and Vermont dairy farmers have had a "no free rider" program in effect for many years. Kentucky has such a program. New York had such a program in the late 1930's and early 1940's, and adopted one anew last year. No "ask-outs" are permitted - all must share the cost - under these state-wide programs. Most states do not have such programs. Several proposed state programs, needing producer approval in referendums, have been defeated at the polls, Pennsylvania being the most recent example.
Federal order programs for financing promotion, new and expanding under recent enabling legislation, provide a broader base of support in some markets, but the "ask-out" privilege and confidentiality as to who has asked out, limit their effectiveness in combating the free rider problem of full service cooperatives. The state system is better, if it meets producer approval, and even the cooperative-wide system seems better given 5% or fewer free riders in a market.

4. Special pricing of last-resort uses of irregular surpluses resulting from balancing.

About half the federal orders have a provision now that lies in this direction. Thirty-two orders price Class II or III milk on the MW series only, and 30 have a butter-powder snubber of some sort. Of the 30, 15 use a make allowance of 48¢ (as in the Northeast), and 15 use a different make allowance, much higher in some instances.

The rationale of the butter-powder snubber is that competitive conditions in Minnesota-Wisconsin, affected by a strong cheddar cheese market, could result in an average pay price in excess of that which would allow any profit at butter-powder plants. Hence, with a 10-cent leeway, orders provided that the butter-powder value would prevail when such occurred. This was particularly important in areas distant from the Midwest where a larger proportion of the milk received at butter-powder plants was an irregular supply resulting from balancing, and, by and large, the orders having butter-powder snubbers were in these areas. An additional reason why this is true is that Midwest areas feel a greater pressure from Grade B milk, and a high Class II price tends to keep it from being pooled.

As the 48¢ margin established in the butter-powder snubber in Northeast orders in the mid 1960's has become outdated by rising costs, proprietary handlers in the area have steadily shifted their operations either out of manufacturing entirely or primarily to the "soft" manufactured products like cottage cheese, yogurt, and sour cream, requiring a regular supply of milk. The full service cooperatives, as a result, find themselves more and more in the butter-powder business, the most profitable or, more accurately, the least loss method of disposal for large volumes of milk available in irregular and non-predictable volumes. In New York State in December 1969, 80.4% of the butter was manufactured by full service cooperatives, but only 33.7% of the cheddar cheese, and 12.0% of all other manufactured products.

The use of a butter-powder snubby affecting the Class II price for all products is a defective solution for the problem under consideration in that it provides a greater margin for manufacturers of cheese and soft products made from milk received on a regular basis as well as for butter-powder or cream-powder made from irregular supplies left over from balancing.

Various modifications have been suggested to remedy this defect. Caution is needed in any modification, of course, so as not to make the tail-end use the most profitable one, or an equally profitable one. The extent to which pressure remains to shift to soft products or cheddar cheese is partly a matter of judgment, and in part depends on calculations as to the extent by which tail-end use in butter-powder is the least-loss alternative for irregular supplies, but few would argue that some pressure should not exist.
Under present conditions in the Northeast, and given the recent changes in make allowances for butter-powder and cheddar cheese under price supports, the writer prefers a pool credit of X cents per hundredweight for skim milk used in powder, with a deduction from X related to the minus seasonals in the Class II formula in March-June, and with a possible deduction from X related to the price of nonfat dry milk or to the butter-powder manufacturing value of milk. The two deductions could be applied separately or could be combined in a simple modification of the February 6 proposal of the New York-New England Dairy Cooperative Coordinating Committee by comparing the Class II price each month with a butter-powder value using a 70¢ make allowance. A possible credit for cheddar cheese, included when the adoption of the proposal in all U. S. markets seemed a possibility, could be excluded, and the make allowance be stated as a specific number rather than as whatever number was used in calculating price supports for manufactured products. If such a proposal were adopted, it would go a long way in helping full service cooperatives finance increasing costs.

Another alternative would be to keep the present Northeast Class II formula, and present returns to the pool from Class II usage, but have a minus of (say) 10¢ for skim going into powder offset by a plus of (say) 5¢ for milk going into other uses, the exact numbers being those that kept the Class II value the same.

5. Charges to fluid milk processors for balancing of supplies.

Milk processors have tended to rely more and more on full service cooperatives for balancing services. Plans for charges related to the costs of balancing, if incorporated in a federal order, could help cooperatives in financing the costs of these services. Legal grounds for such inclusion seem to have been buttressed by the Supreme Court's December 1969 decision in the Allen case on location differentials.

Types of balancing include the following:

1) Day-of-the-week balancing, with more milk wanted on certain days than on others.

2) School-vacation and holiday balancing, with sharply reduced demands for an associated time period.

3) Seasonal balancing, with some dealers wanting much more milk from a cooperative in the short season than in the flush.

4) Time-of-day balancing, with precise demands from dealers as to the minute and hour for specified delivery.

For the moment, let me restrict my remarks to a plan for payment for day-of-the-week balancing. Suggested plans for other types can be devised, more or less easily, but time does not permit discussion of all of them.

A federal order plan suggested by the writer to cover costs of day-of-the-week balancing is a charge of X cents per hundredweight (say 25¢) for milk delivered by a cooperative to a processor's plant on Thursday and Friday that exceeds the average volume for the preceding five days. If the dealer received milk only on Thursday and Friday, he would pay the full 25¢ on his total receipts. If he received no more on Thursday and Friday than average receipts the five preceding days, he would pay nothing.

-50-
Such a plan would not only recompense the cooperative for balancing costs but would also encourage the handler to avoid heavy Thursday-Friday receipts by investing in storage facilities or perhaps in closing down on the 2 days of Wednesday and Saturday instead of Saturday and Sunday, for example. It is not an all-or-nothing plan, where the rate is 25¢ or zero on all his milk, but a non-bracketed plan where the cost shades from high to low depending on degrees of balancing performed.

There are various ways that the money charged handlers could be paid out to producers. A special settlement fund, with a special pay-out plan, would be preferred by the writer, because the pay-out could be geared more finely to the total of balancing services provided. Because of doubts as to legality, however, the suggested plan is to pay out the balancing charge directly to the cooperative that is the supplier, as was done under the Boston order more than 30 years ago. Also rejected is the inclusion of balancing charges in calculating the uniform blend price. This would do nothing toward tilting blend prices in favor of the cooperative providing the balancing service.

6. A bracketed system of charges for services including but not restricted to balancing.

In addition to balancing, full service cooperatives increasingly have been providing such service as quality and field work, writing checks to producers, and guaranteeing adequate milk at all times. These services could be listed, and rates specified for each. This would be in some ways similar to the Boston provision effective from January 16, 1939 through July 31, 1941 to the effect that city handlers buying milk from country plants of cooperatives had to pay 25¢ per hundredweight above the order price to cover country plant handling, hauling, and administrative assessment costs. The apparent reason for deletion of the provision was that it tended to put a ceiling on cooperative handling charges at times when they might be able to bargain for more, and at other times of greatest surplus the cooperatives might lose sales to proprietary handlers not required to make the charge.

Unless graduated rates were provided for each type of service, and perhaps even graduated rates for sub-types of given services such as balancing, the all-or-nothing characteristic of such a plan might lead to inequities or abrupt shifts in supplier-receiver relationships. Nevertheless, depending on circumstances in the market, the plan could provide a workable federal order system that would give material assistance in financing increasing costs of full service cooperatives, i.e., it might be useful in some markets and not in others.

7. Cooperative service payments.

The New York-New Jersey order is the only one with this type of payment. It has been helpful, yet not fully effective, in financing costs of price-improving activities for all.

Other federal order markets, such as central Ohio, have recently attempted, without success, to adopt this type of provision. Until the Marketing Agreement Act is amended, the legality issue may stand in the way of expanded use of cooperative service payments.
8. Marketing service deductions from non-members.

Under other orders than New York-New Jersey, such deductions are limited to the cost of providing market information and verifying weights, samples, and tests for non-members of cooperatives. Unless it is concluded that the deduction can cover other market-improving costs of full service cooperatives, the possibility of increasing the deduction sufficiently to be an effective solution is quite limited.

9. Seasonal price incentives.

The more closely milk production varies seasonally in accordance with Class I sales, the smaller will be the cost to the full service cooperative in providing facilities for and handling seasonal peak surpluses. Hence, it is to the cooperatives' advantage to maintain strong seasonal incentives of an appropriate type.

Last year's increase in take-out rates under the Louisville plan in the Boston and New York-New Jersey orders was a forward step in this direction. Maybe cooperatives would find it worthwhile to add seasonal incentives of their own on top of order incentives, as one of the cooperatives merged into Yankee Milk has done in the past.

Differences in seasonal plans between the New York-New Jersey and Mid-Atlantic orders cause friction, particularly where milksheds overlap. Perhaps the other three Northeast orders should use the Mid-Atlantic plan, or vice versa. If the Mid-Atlantic base excess plan, used on the pay-out side the year around, is used under all four Northeast orders, interchangeable bases among the orders would be desirable.

Strong federal order seasonal incentives would help in the financing problem of full service cooperatives, but only in one of several important aspects. They are far from a complete answer by themselves.


Hauling rate regulation under orders, including differentials related to volume of delivery, size of bulk tank relative to milk production, and nearness to other producers as well as distance from market, would help keep cooperative membership from trending toward relatively large numbers of "high marketing cost" producers. The opportunity for handlers to make gains from private deals with producers also would be reduced if hauling rates were regulated further. Perhaps farm-point blend pricing, with an appropriate blend price profile, and plant-point class pricing, is the ultimate best solution in this area.

The Department's regulation of hauling rates has been minimal in the past, despite its stated belief that it has full legal authority. The Judicial Officer's decision of November 21, 1972 in the Heber Valley Case could firm up federal order activity in this area. To the extent this is done, financing problems of full service cooperatives would be alleviated somewhat.
II. Pool credits for milk diverted to manufacturing plants.

The New York order had unsatisfactory experience with diversion privileges in the early 1940's. Pool credits to compensate for hauling costs led to too much hauling, and pool credits for second-plant handling led to too much milk moving through two plants, or so it is claimed. The evidence pointing thereto was substantial enough, and particularly so with the introduction of some pipeline diversions from one plant to another, that these provisions were terminated.

The main problem relative to the merit of this type of proposal is the extent by which it compensates for necessary costs relative to the extent by which it increases them by encouraging added handling or movement of milk. Pool credits for hauling milk from areas of surplus without processing facilities to manufacturing plants at some distance apparently are looked on with favor in the Southeast at the present time (along with cooperative service payments), but unfavorable Northeast experience seems to weigh against adoption here of this type of pool credit.

III. In conclusion...

I have attempted to give a comprehensive list of possibilities, with the main thrust of this paper being how federal order programs could be changed to help full service cooperatives in financing increasing costs. Three final points are these:

1. If provisions that help should apply to full service cooperatives only, greater attention may need to be given to their definition. Improved organizational standards, improved performance requirements, and additional penalties for not meeting requirements may be needed.

2. The particular one of the 11 possible governmental actions on which I wish to focus most attention is item 5, charges by cooperatives to fluid milk processors, under the order, for balancing supplies. The reason for this emphasis is partly because it has received less attention than other alternatives. Also, it can be more finely tuned to the degree of balancing service provided a handler than some of the others. Moreover, it apparently is a type looked on with favor by the Department. Perhaps a start could be made in one or more orders on day-of-the-week balancing charges, and, if it works satisfactorily, charges be instituted later on for other types of balancing.

3. Item 4, special pricing of last-resort uses, on which there has been more study and discussion than item 5, needs to move along toward a decision one way or the other in the near future. And given the negative response of the Department to the Coordinating Committee petitions of last August 4 and February 6, a new method, leaving the Class II formula in the Northeast as is, and leaving the total value of all Class II milk as is, but with a minus for skim manufactured into powder offset by a plus for milk going into all other Class II uses, deserves consideration.
When I was asked to take over this assignment I was not attracted to the subject, because I do not think there is much new to say on the subject of communications. It would appear that everybody has to be in approval of good communications, just as they have to be in favor of motherhood and against sin. It is somewhat an intangible thing to talk about, and yet as I have had to sit down and actually work out something to say I find that it is nowhere near as intangible as I had at first thought. So, while I probably will not add any pearls of wisdom to the subject, I have some hope that I can say something in a different way which may kindle a spark for a new thought on your part.

At least I can speak with a great deal of feeling in saying that the need for good communications grows in geometrical progression with the size of the cooperative. In our particular situation I did not appreciate the relatively easy job of communication that we had when we were less than 1/3 the size we are now. We were at least basically confined to one dominant marketing area within our membership, and that automatically gave us a common platform of understanding. Now, and I assume that this is true of most of the mergers that have taken place, we have not only a broader scope in terms of numbers, but a much broader scope as to backgrounds on particular issues, we're marketing under different marketing orders, and we have the natural feelings and emotions which arise from being in different geographical areas and coming from different backgrounds. So the matter of communication becomes many times more important and more difficult than it was prior to consolidation.

First of all, let's get on a common ground of what the word communication really means. When used in the sense that I have been asked to use it today, I think of it in terms of "a process by which complete meanings are exchanged between individuals" as opposed to "the technique of the transmission of information". To me the difference between these two definitions is one of actually transmitting the complete meaning of a subject as opposed to the mere transmission of it. This may be drawing a pretty thin line between the two, but when I hear someone say "I talked with him for 15 minutes but we did not communicate at all", it may bring out the difference to you. Why do we actually want good communication between management and our members? It has been said that "improving communication in cooperatives will be the major challenge of management and Boards of Directors in the 1970's." It has also been said that "large, highly complex cooperatives present entirely new problems and challenges in developing effective membership support." Further, it has been said that there should be no fear for the future of a cooperative or its ability to meet necessary changes if its membership is properly informed of its activity. Therefore, it seems quite clear that we
have to communicate properly with our members in order to gain their support and maintain our organizations. We want them to know our motivations, our goals, what we are doing and why we are doing it, and we are anxious to give them a feeling of being a definite part of the whole organization. We want them to feel that it is THEIR cooperative, operated in THEIR interest, and hopefully that it gives them something they can't get anywhere else. First of all it is necessary to overcome to the greatest degree possible the feeling of the average farmer, which is, that the bigger the organization - the less important he is to it, and also, the bigger the organization the less he will know about its actual operations, goals, and motivations. The fact also remains that with the gradual aging of the cooperative movement, the more we realize that we are continually talking to a changing audience. Some have described it as being comparable to one speaker at the reviewing platform talking to a parade, in that he is continually talking to a changing audience and different people with different backgrounds, so the necessity of adapting himself to the situation becomes readily apparent. Undoubtedly this is an exaggeration, but hopefully it drives home the point that the recipient of our communications is an ever changing group.

Back when the cooperatives were smaller in size they actually had, up until quite recently, several men involved in the leadership that were probably the originators of the cooperatives. They could remember the times when they were under tremendous pressures, and the organizations were formed because of these economic pressures. They knew very well what good the cooperative had accomplished in correcting an almost impossible situation. But these men have for the most part retired from their activities and have passed the reins over to another generation. These cooperative originators were well able to pass on their property, some of their knowledge, and hopefully some of their influence, but they cannot give to the younger generations the memory of hardships and the relief experienced when they were corrected by cooperative effort, nor can they pass along the will to win, nor the fierce determination born of struggle and pain. The percentage of members who remember what conditions were like before the cooperative became effective continues to decline. These same originators were also those that remember that the sacrifice in price of a few pennies for dues that brought substantial gains in blend prices was well worth it.

We must remember today, therefore, that we as cooperatives are presently measured not so much by philosophical appeal as in strictly an economic sense. I think what we are after is a combination of these two things in our communications.

As I interpreted the title of the paper, the discussion would be limited to include communications within the members of the cooperative as well as the staff, and exclude public relations as such. In that regard, however, I have to make one comment which is really applied to public relations, that to me the question of communications is merely good public relations with your own people. Back a few years, when public relations men were relatively new to the scene, I well recall a dealer organization, some of whose members were all fired up in wanting to hire a public relations man to make milk dealers heaven-sent bodies in the eyes of the public. The concept of what such a man would accomplish was in general terms that he would be a bonanza for the industry all the way from taking away the headaches and making out the Market Administrator's reports to having the
public calling every dealer in the state telling him what a wonderful person he was and what a fine service he was performing. Actually, it was quite a blow when we interviewed one or two public relations men to have them tell the group that they could really do nothing for them except to be sure that any good that was done by the organization that was newsworthy could be told to the public. In other words, public relations, or communications, are merely a transferring of good deeds, good thoughts, or highly placed goals, that can be told to the public, or to the members, as the case may be. If you have no lofty ideals or actions you are better off to keep quiet. Otherwise if your communications are good enough, your lofty ideals will be discovered, and at that point you will no longer need communications. Conversely, let's assume that there is nothing but lofty ideals and actions represented in the audience, and therefore it is a question of transferring them from our minds and from our offices to the rest of the people of our staffs, and to our members as a whole. We have various means of doing this at our disposal, some of which we use regularly, and some of which we think about using regularly but never do. The first and probably the foremost is by word of mouth. Normally we meet regularly with our Board of Directors, and this is probably the cornerstone in good communications. Other groups that we have word-of-mouth communication with are the delegate body, committees, if any, of the Board, and others that consider specific subject matter, various forms of district meetings, and young co-operator meetings. Now the main trouble with meetings that I can discern is the fact that usually the people that go to church are the ones that already have religion, but even there, many gravitate to the back pews rather than the front. There are many people who can hear the same words spoken but because of different backgrounds put, in some instances, almost completely opposite interpretations on a given set of facts.

So, meetings can help, and at those meetings different forms of communication can be used. Audio-visual aids can be helpful, particularly in getting the group's attention. It is obviously impossible to have those aids on many current operating problems or on how the management staff has interpreted certain policies. So, it has to be a combination of media, with the oral and the written word as the base and other means fitted in where practical.

One comment that I would like to slide in here, hopefully without getting the attention of any of my directors who might be present, is the fact that the cooperative directors and delegates as a whole must be encouraged to view themselves as the elected representative of a group of people, and therefore some acknowledgment of the responsibility of being a direct link in this chain of communications of cooperatives. To me, the jobs carry with them a very direct and explicit responsibility as well to be a very direct and valuable link in the chain of communication.

Likewise, I hasten to add, management has a very direct responsibility and really a special responsibility in regard to the directors, in keeping the directors well informed, forthrightly and in detail, so that the director will be in a position to fulfill his role of leadership in the home area. The director not only should be informed on how the policies which have been determined by them are being carried out by management, but they also should be informed of the day-to-day happenings within their districts, certainly in the areas where the problems might come to the attention of the directors, so that the director himself will be one step ahead of any complaining member. In many cases this can be accomplished by automatically sending directors copies of memoranda, letters, etc., that go to members in his district, but if necessary, by phone, to the extent that there is a major change in hauling rates or some problem of a similar nature that will be more or less widespread in its effect.
By conducting meetings of the previously mentioned groups, we have covered only a small part of our total membership, while at the same time I hasten to acknowledge that certainly the Board, the delegates, and the committee members, who largely make up the governing body of the organization, need a little more specialized knowledge, and therefore communication, than does the general membership. But the line between the two groups is really much finer than I think is usually drawn. The line between them rather seems to me one of detailed explanation versus general knowledge of what is happening. It is, of course, trite to say that the general membership must be well informed so that they will have a very definite feeling of being part of the organization. This is a must, and even though we realize that there are a certain few who will never read an article or a letter, that the number is relatively small, and that they are the ones who do not exert, and therefore do not carry much of a sphere of influence within the membership. It is true that we are attempting to talk to many levels of understanding, or desires of understanding.

In addition to the meetings, we do, of course, have a force of fieldmen each with his own geographical area to cover. These staff members utilize the finest form of communication—a face to face discussion. While they see many farmers during the course of a month, they can't possibly cover them all with all types of current information that it is necessary to impart. They do, however, if they are kept properly informed, have the opportunity of dealing with specific problems of misunderstanding on the part of the individual members. Their skill and adeptness in helping members solve individual farm problems are some of the best ways to secure good membership relations, which is, after all, the main thing that we are attempting to provide with good communication. It is obviously important, however, to have a high type, knowledgeable man in this close contact work, for if there isn't, there is more potential harm than good involved.

Another means of communication is the monthly or semi-monthly publication; this being sent to all members on a regular basis hopefully will improve the organization's image insofar as the members are concerned, although obviously we can run the same danger here as we do in any communication. If it is not good in the eyes of the member, then it transmits a poor image as opposed to a good image. In all of our communication efforts, therefore, there is a real need to continually up-date and revise our preconceived notions of what communications must be, and it must be revised through the eyes of the members and not only a manager who tends to get into a comfortable rut and be satisfied with what's gone on in the past just to get the job done. In our organization, we also use a newsletter, which is issued between the monthly mailing which goes to all officers of the organization and other personnel to keep them posted on any other developments that have a bearing on our local dairy situation.

One means of communication in which I am personally very much interested is the letter that is sent with the semi-monthly checks. This seems to be an ideal time to get the members' attention, as the normal member is certainly looking forward to receiving his check. We try to keep this letter down to one page, to discuss matters a little more intimately with the members than we can do in the publications that receive more widespread distribution. And while I have yet to find a member who saves a letter and throws the check away, I have had a great many good comments.
concerning this effort, and it is an effort, to which my secretary will attest, as sometimes it seems as though the checks were going out almost every other day. This item particularly points out some of the difficulty that I was trying to describe earlier, in a growth from a relatively local cooperative to a regional one, in that the paragraph describing the base on which the enclosed check is calculated needs many revisions to go to specific groups. For there are many different practices throughout the milk shed, particularly in connection with the way advance checks are calculated. We make the revisions, however, and as many as eight different versions are sent out from our office.

In addition to these means, we also attempt to get out necessary press releases on a fairly regular basis, although we do not make any attempt to give releases when there is nothing of interest to discuss. This has some of the aspects of a public relations problem, but through my eyes at least, it is more directed to the members than it is to the general public, as I think it all goes to give the general membership a feeling about his cooperative, hopefully, that is good.

One area of communications which we feel is extremely important has been the encouragement to our group of young cooperators in our organization. Since the formation of our enlarged cooperative we have extended this young cooperator movement to all districts. We have recently completed a series of meetings which were attended by our young people throughout our membership area, and which generally were very well attended. We find a great deal of interest in this age group, which is 35 and below, and a substantial participation by the wives of these young people. We find that their interest and desire for knowledge of the cooperative is intense, and I want to say to all of you who have not participated in a young people's meeting recently that if you want to be jarred out of your rut, expose yourself to questions from this group for an evening session. I think you will find that they can raise questions that are very basic, and which may not even have been raised by all of the regular membership of the organization. We feel very strongly that the time spent with these young people is extremely advantageous, primarily to us, but also to themselves.

To go back to the simile about talking to a parade, I think basically what we are attempting to do is to break the public down into groups of people, each of which will hesitate before the speaker in the reviewing stand for at least long enough to get across a short message. With all our efforts we are transmitting information to each group, but the real measure of success is really unanswered at this point because we are not sure whether or not we are truly communicating. Can we translate our goals, our efforts, and our conduct into the means, either by words or actions, that will give our people the feeling that we are the best ones to represent them in the milk market place. We can try and must keep on trying. Measurement is difficult and in most cases is impossible.

Communication demands the continuing attention of cooperatives that intend to succeed.
I would like during the next few minutes to give you some of my thoughts concerning the present most interesting situation we find ourselves in as agriculturists. For the first time in many years - perhaps the first time ever in United States history - agriculture has become the major tool in our foreign policy. As farmers, and as those who work for farmers, we have always recognized agriculture's important role in shaping world events. The problem, particularly here in America, in the past and until very recently, has been that farmers have been relegated to a position of second class citizenship. The vast majority of U. S. citizenry imagined the farmer as a slow moving, good natured, rather stupid individual with a straw hat on his head, overalls over his union suit, sucking on a piece of straw. The reason he was farming was because he was not fit for anything else. Quietly, but dramatically, over the past thirty years this "man of the soil" has been forced to make some drastic changes in his way of life. The causes for these changes were many; such as increased population, world hunger, three wars, economics called the price-cost squeeze, inability to get labor, science and technology, a political policy that demanded cheap food, political coalitions such as the European Economic Commission, and a change in world eating habits from starch and cereal to protein.

All these factors, plus others, forced farmers out of "a way of life" into the harsh realities of the business world. A farmer all of a sudden was not producing food for just his family but was expected to support himself plus many other people. Small farm acreage with four-legged horse power was not up to the challenge. Money management of huge capital investments and much larger land holdings became absolutely necessary not only to meet our nation's and the world's demand for more food and fiber, but also because of the cheap food policy and the economic demand upon each farmer to get more production per acre, per tree, and per animal. Farmers were literally forced to become the most efficient producers in the world. Those that did not were forced out and their land and animals gobbled up by those who survived. The results, as we see them today, are a small band of the most highly educated, highly skilled, most able business managers in the world.

The price-cost squeeze kept the farmer falling back three steps for every two he took forward. Even though what he receives for his products has risen steadily, his input or production costs always go up a little higher and a little faster. The only possible way for him to stay even, or perhaps gain a little, was to become a producer of volume. More investment, more acres, more livestock were needed to gain a small profit. Some farmers made the transition, many did not, to the point where less than 5% of our total population remains to feed our 205 million people.
Now while this miracle of production by a mere handful was furnishing the American public with an abundance of reasonably priced food, another domestic revolution was taking place.

Over the past fifty years America had little competition in supplying the world's needs. The rest of the world was busy recuperating from first World War I, then World War II, then colonial wars where empires, such as those controlled by the Dutch, French, British, Spanish and Portuguese, were falling apart and the developing nations began to emerge. While this was going on, American industry, as well as American agriculture, was shoring up the timbers of the newly emerging world structure. America's farmers kept the rest of the world from starving to death while America's laborers and industry were rebuilding the devastated cities and economic structures. The McArthur plan for Japan and the Marshall Plan for Europe worked well - so well that those we set back upon their economic feet have now come back to offer us some keen competition in world trade. A balance of trade and payments that for years had been in America's favor suddenly switched to a deficit of sizeable proportions. The dollar took second place to the yen and the mark. And now the economic system of our great country is in serious jeopardy. When this problem, (though limited) had been a factor in the past, we looked to our industrial might to right the imbalances and set us back on economic solid ground. Industry for all its conglomerate size and labor with its assembly line efficiency suddenly lost its international punch. Big labor wanted more money per hour, less hours of work, and fabulous fringe benefits that have to come -from corporate profits. Strikes interrupted orderly production schedules and labor's ability to produce efficiently soared downward while agricultural production soared upward. All of a sudden the big companies started to look elsewhere for opportunities. The electronic industry looked to Japan, the auto industry and the tool industry to Europe, the typewriter industry to Europe, and other conglomerates eyed Africa and South America. Big labor and big industry are locked in a great battle of survival and that fact, coupled with huge government, due to over-spending and inflation, knocked our dollar in the head to the point of several devaluations, which further aided our foreign competitors.

In my judgment our total economic system is in serious trouble. As efficient and productive as our agriculture is, it cannot in the long run save our economy from chaos. Our economic chain is made up of the links of industrial management, industrial labor, and agriculture and if any one of those links becomes weak the total chain snaps. We in agriculture can be proud of our accomplishments but can take little satisfaction in the long run outlook if our partners in industry and labor are in trouble. The other thing we must never forget is that agriculture is strong not because it had any super genius but because our own survival depended on our own individual, and in too few instances, our collective initiative.

The past forty years are strewn with the wreckage of small farm families that could not make it and, although the rest of agriculture bailed us out, the individual tragedies are none the less real. This process continues and anyone living in Connecticut or the Northeast for that matter, knows only too well the hazards of remaining economically viable. What agriculture gained by necessity, labor and industry are letting go by default. You can't for too long demand more money for less work, more benefits from less productive output. This combination has never, and will never, lead to prosperity. Keeping the above economic facts in mind, I return to my thesis that no longer does our present foreign policy look to the industrial
sector to bail us out of our imbalance of trade and payment policies. Mr. Nixon and company are staking their political future (and America's future economic stability) on the ability of a small minority of over-worked, under-paid, often harassed farmers to set our economic ship of state back on an even keel.

While there is widespread alarm among America's economic circle concerning our dollar plight, there is another crisis that has been, and will continue to effect us and it's a most serious problem with consequences of tremendous hardship. I'm speaking of the energy crisis. We have dire warnings of home heating and gasoline rationing plus a breakdown in our utility's ability to produce. And at this point in my remarks I hope to show you how our present government thinking has turned from economic salvation by our industrial segment to that of relying on agriculture. All of my remarks and reviewing of economic history leads me to the conclusion that "the name of the game is oil". High government officials who for the most part have come from big business are now admitting, and being quoted in the following amazing statement: "The United States of America has lost, probably forever, its edge over western Europe and Japan in manufacturing and technology. Who would have believed twenty-five years ago that high knowledgeable American leaders would be making this kind of an admission. Nevertheless, today's economic facts bear out the heart-breaking truth of this admission and this leads us to the question, "HOW DO OIL AND FOOD MIX?" The immediate question arises as to how in this economic imbalance, coupled with a severe energy crisis, do you pay for oil if you can't export enough manufactured goods? That, my friends, is where agriculture comes in. The U. S. is fast exhausting its once-plentiful natural resources. But there is one natural resource that, if cared for, never becomes exhausted: farmland. The U. S. has the acreage, the climate, and the potential surplus over its own needs to become the granary of the world - a world where both population and ability to pay are rising fast.

Thus, do the facts fall into place. The Nixon Administration is betting on agriculture to save the dollar. For if oil is essential for industrial civilization, food is necessary for life itself. Food is, potentially at least, the most priceless of all natural resources.

The U. S. last year ran a balance-of-trade deficit of $6.8 billion. On top of the current woeful situation, the future seems impossibly bleak: By 1980, under not overly pessimistic projections, the U. S. could be laying out $18 billion to pay for imported oil, compared with a $4.2 Billion pay-out in 1972. If things were to stay the same, this would imply a potential trade deficit of $20 billion and national bankruptcy for the U. S.

Agricultural exports already are one of the few bright spots in the U. S. trade picture. In fiscal 1973 (the year that ends June 30), the U.S. will export $11.1 billion worth of Agricultural products. It will import, estimates the Department of Agriculture, $6.8 billion. After subtracting $1 billion of foreign-aid-type foodstuffs from the export total, that still leaves a healthy $3.3 Billion cash trade surplus in agriculture - largely balancing the deficit in oil.

Food for energy which is oil. Now do you begin to see why after forty years of essentially the same kind of farm legislation that controlled the flow of supply and demand, artificially influenced the marketplace and guaranteed cheap food to the American public is changing? The controls are
coming off, food prices are being allowed to go higher as the law of supply and demand takes over the marketplace and instead of shipping industrial products abroad as security for balance of trade, we are turning to wheat, corn, and soybeans. From the majority of farmers will come a grateful "Hallelujah" but, and I emphasize the but, not from all agricultural circles. Dairymen will lose in at least two ways. First, and this has already happened, feed prices have gone sky high and, secondly, dairymen stand to lose at least 25% of their market. Dairymen are not the only segment of agriculture that will feel the effects of this new foreign policy.

Men producing labor intensive crops such as fresh vegetables and fruit, rice, peanuts, sugar, and wool will see a dramatic increase in foreign competition. A billion-dollar increase in imports of cheese and dry milk face the U. S. dairyman. Secretary Butz is quoted as saying, "In order to get something we must give something and the giving is the common market's insistence on shipping us more cheese." Whether we like it or whether we don't, Secretary Butz is quite right. If we want to see billions of dollars worth of grain abroad, in place of industrial goods, in order to buy oil to alleviate the energy crisis and our imbalance of payments, we will have to drop our trade barriers and let some of the World's processed foods come into America. Mr. Lester R. Brown, Agricultural Economist, Overseas Development Council, Washington, D. C., is recently quoted as saying, "If I were forming U. S. Economic Policy, I would move in essentially the same direction as the Nixon Administration is now planning. I doubt if our government has any alternative to pushing farm exports to ease our tremendous trade deficit."

So my Northeast dairy friends, we are entering a whole new ball game and if I had any management authority I think the first thing I'd do would be to fight to consolidate all Northeast dairy cooperatives into one and then I'd push forward a sales campaign that would leave no doubts in the minds of individual farmers that if they're not on the team today, they won't be in the ball game tomorrow.

The biggest question to come down the agricultural pike in many a year is, "Can Agriculture Save the Dollar?" The Nixon Administration is betting on it and like it or not, you're caught up in this new trend in America's foreign policy. If food and oil do mix we'll solve a lot of problems, but we'll also create some and you, my dairy friend, are going to be right in the middle of the experiment. Your one hope is for unity with a clout.
MORNING SESSION - ISSUES IN FEDERAL MILK PRICING PROGRAMS

A. New Pricing and Pooling Alternatives for Federal Milk Orders
C. The Right to be Heard
Generally the federal order program has worked well up to this point. It has been of benefit to producers, of benefit to processors, and of benefit to consumers. This is not to say that there are not things that could have been improved in the past, nor that there is no improvement needed for the future. However, the federal order program basically has been a good program, and the following enumeration of problems and discussion of possible alternatives for the future are presented in a spirit of improving the present program—not of condemning the present program.

Problems

Both processors and producers currently have some problems that need not be perpetuated by the terms and provisions of an administered pricing program such as the federal order program.

Problems of Processors

An enumeration of problems of processors that might be alleviated by alternative federal order provisions would include the following:

1. Class I price alignment among orders and competing handlers arising out of:
   a. Federal order minimum prices, and
   b. variations in the relationships of services provided and charges made by cooperative associations

2. Price stability and predictability for purposes of:
   a. short range market planning, and
   b. contract bidding.

3. Pricing both butter-powder and cheese in the same use class, and probably less critical, non-storable manufactured uses in the same class as storable manufactured uses.

Problems of Producers

Problems of producers that might be alleviated by alternative federal order provisions would include:

1. Equity in sharing costs and returns among producers
2. Lags in price adjustments,
3. Growing quantities of reserves needed relative to Class I sales in the major fluid milk markets
4. Increasing cost of balancing operations and processing reserves when not needed
5. Increasing quantities of reserve developing outside of the present federal order market pools from conversion of manufacturing grade milk.

Federal Order Alternatives for Processor Problems

Pricing Milk for Manufactured Product Uses

The major problem that has developed in pricing milk for manufactured product uses centers around the practice of trying to fit both butter-powder and cheese milk into the same use class. Over time, higher returns to cheese will attract more milk into cheese uses until eventually returns equalize, and vice versa. But on a short term basis, less hardship and inequity to organizations involved would result if the regulated balancing plants were expected to account to the pool on a basis related to the market value of the product made. This would still provide the incentive for shifting the use of milk among the various product alternatives on the basis of relative returns, but would not be imposing additional penalties through the federal order pricing and accounting provisions.

The only alternative to the present pricing system that I have to offer today is the establishment of separate class prices for butter-powder and cheese uses. For non-storable manufactured product uses, it is possible they should have a class of their own. But if not, then they should be priced in the higher of the two storable manufactured product classes.

Price Stability and Predictability

There seems to be no way to achieve price stability when cost and price levels are changing at the rate they have been changing in the last few months. However, there does seem to be some improvements that could be made in the present pricing methods.

The present method of changing prices a few cents each month as the Minnesota-Wisconsin average price changes has practically no economic justification. These kinds of small changes do not affect a demand response, for they cannot be reflected in the street price. Similarly they cannot be construed as an effective signal to supply, because supply does not change from month to month in response to a small change in price. The only effect of such small changes is to squeeze or widen the processor margin.

An alternative that should be strongly encouraged is the adoption of bracket pricing with intermediate zones between the brackets. An example of the difference between non-bracket pricing and bracket pricing with 15 cent brackets appears in Figure 1.
Class I Price Alignment

Class I price alignment problems for processors arise from two sources. One problem arises from the minimum prices established by federal milk orders. The other is the result of additional differences in cost between handlers arising from variations in services provided by cooperatives and the charges made for those services.

Some degree of malignment in federal order minimums appears to be inevitable with the present pricing structure that varies Class I prices among markets according to costs of alternative sources of milk plus transportation. There are two alternatives that might be pursued. One would be the traditional market by market changing of pricing formulas to achieve improvements in present pricing patterns. This alternative should become simpler as one major alternative source of milk emerges. The upper midwest is expected to become the primary alternative source of milk as other pockets such as the Kentucky-Tennessee area disappear. But even then, this process is a complicated, cumbersome, and almost impossible task.

A new, and as yet untried alternative, would be the establishment of a single national Class I price with producers paying the cost of delivering milk to the market. This alternative would result in each processor accounting to the pool at the same Class I price, no matter where his plant was located. Such an alternative appears to provide for simpler order administration, and would allow processors to compete on the basis of their efficiency and marketing ability rather than on the basis of differences in order costs for the raw product.

The second source of variation in Class I cost of milk to processors results from differences in services provided by cooperatives and the payments made by processors for those services. Currently, these variations are not regulated by milk orders. An alternative, of course, is to provide for milk order regulation and pricing of such services. Milk order price regulations might include a schedule of charges in addition to the class prices to be paid by the handler for services received. Presumably, necessary services a handler provided for himself rather than received from a cooperative would represent additional cost of operation to the handler. Hence, there would be a possibility for equivalence in cost to the handler of the raw milk supply whether the handler performed his own services or procured the services from the cooperatives. Collections under such a provision, then, should be paid to the organization performing the services, and incidentally, this could include maintenance of reserve standby pool supplies. Such provisions would be similar to the cooperative service payment concept, except they would be paid by the handler instead of being taken out of the producer pool. The primary problem with such a procedure would be accurate determination of appropriate cost associated with services, and keeping these costs up-to-date over time. A schedule of costs that was too low would not adequately compensate cooperatives performing the services. A schedule too high would make it advantageous for each processor to provide his own services. This would promote inefficient duplication in a market. A North Central Regional Committee research project now underway may help provide some information concerning costs of performing market services.
Federal Order Alternatives for Producer Problems

Equity in Sharing of Costs and Returns

Inequities in sharing of costs and returns among producers is a long standing problem. However, it is becoming a more critical problem as costs of providing a given level of services increase and as the amount of services provided by a portion of the producers increases. It appears that it will become increasingly more critical in the future as costs relative to returns are continuing to increase, and will likely continue to do so. Items tending to increase the cost borne by those producers providing them include:

1. An increase in the amount of reserves relative to Class I sales being required to service the needs of handlers. The impact of this increase can be lessened by more careful movement and assignment of existing reserves.

2. Increasing losses on processing of added reserves in market balancing plants when not needed for fluid uses.

I cannot add to the list of alternatives cited by Stewart Johnson earlier in this conference.

Lags in Producer Price Adjustments

The present method of adjusting producer price does not anticipate potential changes in the supply that will be forthcoming. Price adjustment is made only after changes in supply relative to demand have occurred. Recent feed and production costs increases provide an illustration of the problem. Adequate price relief provided from the Minnesota-Wisconsin mover does not occur until potential reductions in production have worked their way out in fact. I have labeled this "After-the-fact" pricing.

The alternative appears to be an economic formula. This alternative should not be sought because it will give a higher price or a lower price - it can be designed to do either. However, it should be sought for its possibilities for "predictive pricing" instead of "after-the-fact pricing."

Relationships to measure in an economic formula would be first, basic economic trends. For this measure, the choice of factors to include in the formula is not very important, for they all tend to reflect basic changes in economic trends. The second group of relationships to measure deal with deviations in milk supply-demand relationships from the basic trend. These may be short term deviations such as temporary shifts in supply and demand relationship. For these, temporary adjustment could be in order. The other source of deviations of milk from the basic trends could be long term, like shifts in productivity. These tend to be permanent in nature, and call for permanent modifications in the pricing formula. The Minnesota-Wisconsin series gives a reading on all of these items simultaneously - but only on an "after-the-fact basis."

Possibly an illustration of the difference between predictive pricing and after-the-fact pricing could be provided by comparing the National Milk Producers Federation proposal and resulting prices versus the Minnesota-Wisconsin series and its resulting prices. The committee that developed the NMPF formula never
envisioned the proposed formula running unchanged and unattended for four years. In fact, the proposal included a mandatory 18 month review of the formula plus additional triggering ratios to signal review and possibly hearings on the formula. But if the formula had operated as proposed for the last four years without any modification or adjustment, it would have produced prices compared to Minnesota-Wisconsin's series similar to those shown in Figure 2. The four year average difference between the Minnesota-Wisconsin and the economic formula was about 9 cents per hundredweight. The economic formula would have averaged a 9 cent higher Class I price over the four years. However, the formula did pull away from the Minnesota-Wisconsin level about mid-1971, and for the last year averaged $3.125$ cents above the Minnesota-Wisconsin average.

Production when compared to the same month a year earlier had been increasing up until the middle of 1972. Then production began falling short of the same month a year earlier. In the Northeast, thoughts of flooding and feed shortage may come to mind as influencing the decline in production in this area. But Iowa, Minnesota and Wisconsin did not have flooding or severe feed shortage. And these states also have shown a decline in production when compared with the same month a year earlier (Table 1).

This paper does not purport to substantiate an allegation that the National Milk Producers Federation economic formula produced the right price, but it does submit that if the objective was to price for a continuing adequate supply of domestically produced milk, then the Minnesota-Wisconsin price for the twelve to eighteen months prior to mid '72 was not the correct price to achieve that objective. And, unless negated by imports, consumers are liable to pay through the nose for that error in pricing in the period ahead.

I don't believe it is possible to devise a perfect formula, one that can be adopted and left to operate unattended. But I do think we should do the best we can, get an economic formula into operation, and then fine-tune it as it operates.

Accommodating Manufacturing Grade Milk as it Converts

Manufacturing grade milk is continuing to convert to Grade A. As it does, it will tend to seek a share of Class I sales. Without a method for systematic accommodation, disorder can result. Alternatives seem to be two. One is to support it in a reserve standby pool arrangement; the other is to pool it in fluid milk markets of the present order system.

At the present point in time, support of the reserve supplies in the standby pool arrangement appears to offer important advantages of efficiency and orderliness over the other alternative. The arrangement as it has been operating allows producers in major fluid milk markets to improve their price situation without increasing class prices by reducing the level of reserves in their pool. They have been able to do this without impairing their ability to fully supply the needs of their processors. The arrangement has allowed ample reserves for the marketing needs of fluid milk processors without the price depressing effect of pooling reserves when not needed.
and without adding increased excessive cost associated with processing unneeded reserves in low volume market balancing plants. It has allowed producers in surplus areas to share in higher valued Class I sales without incurring unnecessary and wasteful marketing and transportation costs except when needed. It tends to allow the bulk of reserves to be processed in high volume low cost facilities when not needed. It assures processors of adequate reserves at reasonable and predictable prices, even when unexpected shifts in demand, tight feed supplies, or floods occur. It can provide consumers benefit from greater efficiency and orderliness in milk marketing; less total reserves being needed to adequately supply the market, lower costs of processing reserves when not needed, and lower class prices needed to attract and hold the production of milk for the marketing needs of their processors.

Alternatives to pooling it in the present order system do exist. One would be a proposal called a Pollard proposal, in which a national order is established with existing orders treated as handlers under the national order, and with equalization payments between the existing orders and the national order.

There is also an alternative to pooling it in the present order system. In the present order system and the present price structure, the added milk will yield lower blends. However, it appears that the establishment of a national class I price at the highest market level than existing would allow the accommodation of the remaining manufacturing milk in the present order system without disastrous effect on blend prices. From an analysis done by the Standby Pool Cooperative Study Committee, it appears that full conversion of manufacturing grade milk (estimated at 27 billion pounds) could be pooled in the major fluid market pools with potential blend price reductions of 1 to 14 cents in 14 markets and higher blend prices in the remaining markets (Table 2). This analysis compared potential changes in blend prices by 1976 with existing price relationships among the markets, first with no additional supplies from conversion of manufacturing grade milk, and then with projected additions to supply. A second analysis was made to estimate the added effect of full conversion of manufacturing grade milk if a flat Class I price of $8 per hundredweight existed for all markets.

Summary

The pricing and pooling alternatives for federal milk marketing orders I've been talking about might be summed up as one national Class I price for all markets, moved by an economic formula by brackets and with intermediate zones, with separate class prices for butter-powder and cheese uses of milk with costs of market-wide service being borne by the total market rather than just those producers whose cooperative provides them.
### Table 1: Milk Production Estimates, Percentage Change from the Same Month a Year Earlier, January 1971 Through March 1972

<table>
<thead>
<tr>
<th>MONTH-YEAR</th>
<th>U.S.</th>
<th>N.Y.</th>
<th>PENN</th>
<th>OHIO</th>
<th>WISC</th>
<th>MINN</th>
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<td></td>
<td></td>
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</tr>
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| MAR        | +2.1| -0.1| +2.6| +3.7| +3.0| +0.9| +0.3| +5.6  |
| APR        | +2.1| -0.2| +2.3| +3.2| +4.0| +1.4| +1.0| +6.7  |
| MAY        | +1.1| -0.1| +0.6| +4.4| +2.7| +0.8| +3.1| +4.8  |
| JUN        | +1.7| -1.6| -2.4| +3.7| +3.8| +2.3| -2.3| +7.9  |
| JUL        | +1.8| -2.7| -4.0| +2.3| +6.3| +1.4| 0   | +7.6  |
| AUG        | +1.6| -3.8| -4.5| +1.3| +6.7| +3.4| +2.4| +7.3  |
| SEP        | +1.4| -3.5| -5.1| +2.0| +5.1| +0.8| -4.2| +7.7  |
| OCT        | +1.2| -5.2| -6.6| +0.8| +3.4| +0.1| -1.8| +8.2  |
| NOV        | +0.6| -5.9| -6.2| -2.6| +3.8| +0.3| +0.3| +7.5  |
| DEC        | -0.2| -0.7| -0.6| +4.1| +2.0| +2.0| +3.4| +6.7  |
| **ANNUAL** | +1.6| -2.3| -1.7| +1.1| +4.2| -0.4| -1.8| +7.4  |

<p>| <strong>1973</strong>   |      |      |      |      |      |      |      |       |
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(a) Source: FEDERAL MILK ORDER MARKET STATISTICS.
(b) Includes transfer net of transfer cost shown for Eau Claire, Wisconsin surplus area.
(c) Only 6,071 million pounds of the 6,383 million pounds were transferred. Any additional transfer would have reduced the price net of transfer costs below the Minnesota-Wisconsin Series price.
Figure 1. Comparison of Base Prices Derived from the Straight Minnesota-Wisconsin Price Series and from a Modified Minnesota-Wisconsin Series Formula Using 15 cent Brackets and a 5 cent Intermediate Zone for Federal Milk Order Class I Pricing Formulas, April 1969 through May 1973.
Figure 2. Comparison of Base Prices Derived from the Minnesota-Wisconsin Series and the National Milk Producers Federation Proposed Economic Formula with Milk Production Changes Compared to the Same Month a Year Earlier, April 1969 through March 1973.
The future dimensions of dairy price support will be largely determined by farmers, consumers, Congressmen and Government people.

Dairy farmers, acting individually with respect to dairy operations on their farms, and acting jointly through their cooperatives and the National Milk Producers Federation, will play an important positive role.

Consumers will continue to have a major influence through their purchases of milk and its products in the market place.

Members of Congress and Government officials will continue to have the final "say" as to the type and extent of dairy price support and related programs.

Because of the direct and close relationships between manufacturing milk prices and prices of milk for fluid uses, the future dimensions of price support for manufacturing milk will have a major effect, not only on the levels of Class I prices, but also on the types of pricing provisions in Federal orders.

We may expect to see several long-run trends continue.

The number of dairy farmers will continue to decline. Many farmers now milking cows will not have the necessary capital to enlarge and modernize their dairy farming operations, or will be unwilling to commit themselves to heavy indebtedness to do so.

For these and other reasons, such farmers will either quit farming or devote their resources to production of cash crops or other livestock, mainly beef. The total number of milk cows will continue to decline, probably at a slowing rate, for some years before leveling off. Herd dispersals will be offset to some extent by increases in sizes of herds which remain in production.

Average milk production per cow will continue to rise, but also at a slowing rate, as more farmers reach or exceed optimum rates of concentrate feeding.

The relative rates of change in total number of cows and in production per cow will govern in the future, as in the past, whether total milk production will increase or decrease. The price support level could tilt the balance in either direction.

Two main developments likely will help to maintain the over-all consumer demand for milk and its products as a group. Prices of meat, especially
beef, probably will continue to be among the highest priced foods, as a result of the rapidly growing demand for meat throughout the developed and developing countries of the world. This, together with the aggressive merchandising of the many styles and varieties of cheese, fortunately will result in a continuing increase in the demand for, and consumption of, cheese.

Meanwhile, more rapid and larger increases in prices of other major foods may help to maintain the total consumption of milk and its products.

Since the future dimensions of the dairy price support and related programs will be largely man-made, no one can predict with certainty what the future holds.

Let us consider several of the possibilities:

1. The continuation of the present types of price support and Federal order programs.

2. Repeal or weakening of the price support authority.

3. Some modifications of, or substitutes for, the present type of price support.

One possibility is a continuation of the dairy price support and Federal order pricing programs in substantially their present forms.

During the last 23 years, the support level for manufacturing milk has varied over the full range of 75 to 90 percent of parity, as authorized by the Agricultural Act of 1949.

The milk equivalent of the butter, nonfat dry milk, and cheese removed from the market has ranged from near zero up to 10 percent of the total farm marketings of milk and cream. The net costs of the support operations have ranged up to around $600 million a year.

The support level was raised from $4.93 a hundredweight to $5.29, the legal minimum level, effective March 15, 1973, through the marketing year ending March 31, 1974. It apparently was increased only because the law required it.

The parity index of production and living costs paid by farmers, which largely determines the parity prices of farm commodities, almost certainly will continue its uptrend in the years ahead.

Accordingly, 75 percent of the parity equivalent price of manufacturing milk will continue to rise. Thus so long as the present dairy price support provisions of the Agricultural Act of 1949 remain in effect, the Secretary of Agriculture will be required to raise the support price accordingly. Under the present Federal order pricing provisions, this would automatically raise Class I prices.

The Secretary could, under the 1949 Act, set the support level above 75 percent of parity. The act requires him to set the support price at such level between 75 and 90 percent of parity as he deems necessary to assure an adequate supply.
Other real possibilities which could greatly change the dimensions of
the dairy price support is the amendment of the Agricultural Act of 1949 to
lower the legal minimum support level, or make the authority optional rather
than mandatory, or even repeal the dairy price support provisions of the Act
entirely.

The President has recently stated publicly that he considers the dairy
price support program and certain other farm programs to be outmoded.

The Secretary of Agriculture, in testifying before the House Committee
on Agriculture, just recently recommended that the 75 percent minimum sup­
port for milk be eliminated.

With every election, Congress has become, and will continue to become,
more urban-conscious and urban-dominated.

In a climate of "consumerism", and concern about inflation, food
prices, and Federal budget deficits, the farm programs which involve
Government expenditures can be expected to be prime targets.

If and when the dairy price support authority is repealed or so
weakened as to be ineffective, prices of both manufacturing milk and milk
for fluid uses will be adversely effected.

In such an event, serious consideration undoubtedly would be given to
changing the Class I pricing provisions of Federal orders to provide for
maintaining and increasing Class I prices, more or less independent of manu­
facturing milk prices.

Also more serious consideration probably would be given to so-called
"Class I base plans", or fluid-manufacturing milk price plans, to permit
farmers to produce milk for fluid uses and not for relatively low-priced
manufacturing use if they so choose.

A marketing order to set a minimum price for all manufacturing milk-
without government purchases to act as a safety valve- would not be a
feasible alternative to the present price support program. The present
program serves as such a safety valve. Under it, the Government removes
from the market, in the forms of butter, nonfat dry milk, and cheese, all
milk produced and marketed by farmers in excess of the quantity that can be sold in all forms in the consumer markets. This makes it possible for
prices received by farmers for milk for both manufacturing and fluid uses
to be higher than they otherwise would be.

Future imports of dairy products could materially affect the future
dimensions of the price support program. There will continue to be three
increasing pressures to enlarge or remove import quotas. The entrance of
Great Britain into the Common Market, greatly curtailing the traditional
British market for dairy products produced by New Zealand and certain other
exporting counties, will make the U. S. market all the more attractive to
them.

Another pressure may be a temptation by exporting interests to use
dairy product imports as trading bait in negotiating large exports of
grain.
A third pressure may be for relaxing import restrictions to ease food prices.

The President recently asked Congress for legislative authority to reduce or suspend tariffs and quotas. The Tariff Commission held a hearing last month on a proposal to expand cheese imports by 64 million pounds during April, May, June, and July.

New Zealand, with its "grass" economy, will continue to rely greatly on exports of dairy products.

European countries, most of them supporting or maintaining prices at high levels in their domestic markets, probably will continue to produce large surpluses, and to subsidize exports of dairy products in one way or another, for some years to come.

Thus, there will continue to be large foreign supplies of dairy products which would flood the U.S. market if permitted to do so.

With the present dairy support program in effect, a flood of imports would cause a corresponding increase in Government purchases and expenditures under the program, and not only prevent any increase in the support level above 75 percent of parity, but intensify pressure to repeal or weaken the dairy price support authority.

If and when such authority is repealed or weakened, increased imports certainly would so depress the domestic prices of milk as to greatly speed up the exodus of farmers from dairying.

Another possibility, but a remote one, which could affect the future dimensions of the dairy price support program is supply-management.

The National Milk Producers Federation and its membership worked hard last year to develop a workable supply-management proposal for consideration. It was outlined and discussed at many Federation sponsored meetings, and at the Federation's last annual convention. The result is that there is not now sufficient agreement and interest within the dairy industry regarding supply-management to warrant seeking legislative authority for it.

With the changing complexion of Congress, it will be increasingly difficult to achieve the enactment of new dairy legislation. No legislation will have any chance of passage unless dairy farmers present a strong, united and unanimously supported effort.

The only excuse urban-conscious Congressmen need for non-support of legislative proposals is division within the dairy industry concerning such proposals.

Also, new legislation has little chance of enactment without the support of the Executive Branch of Government. For example, numerous bills, initiated by the National Milk Producers Federation in recent years to restrict imports and to require increases in support prices, have died without action.

Dairy farmers may have to fight hard during the years ahead to keep the present legislative authority for price support and to keep dairy product import restrictions from being liberalized or lifted. Loss of these two
programs would have serious adverse effects on prices received by farmers for milk.

The National Milk Producers Federation was largely instrumental in enactment of authority for both price support and import restrictions many years ago. The Federation has, over the years, made strong presentations of the views and policies of the Federation membership concerning these and other dairy programs, to the Congress, the Secretary of Agriculture, and other agencies.

There will be greater need than ever before for dairy farmers to present a vigorous, united effort to retain and improve the price support and other programs in the years ahead. They will have to be very active and aggressive in looking out for their own interests. Dairy farmers cannot just tend to their milking and expect anyone else to provide the programs they need.

The extent of this effort by dairy farmers will have an important influence on the future dimensions of the dairy price support and related programs.
THE RIGHT TO BE HEARD

by

Eugene J. Vandenbord
Dairylea Cooperative, Inc.

Imagine for a moment that you are in a hearing room. After having been sworn in by the hearing officer, I would proceed with my statement as follows:

My name is Eugene J. Vandenbord and I am a dairy farmer from Delancy, N. Y. I represent 26,000 dairy farmer members of cooperatives belonging to the New York-New England Dairy Cooperative Coordinating Committee. I am authorized to speak for them..............

But wait! If the hearing never gets called, I never have the opportunity to indicate to anyone what my name is, or who I represent, or what I want to present.

Not long ago I heard that there had been an editorial written some years ago for the Dairynews entitled "The Right to be Heard." In looking up the index of subjects for the Dairynews I wondered under which subject it would be filed. Would it be under "editorials", would it be under "rights", or "hearings." After an unsuccessful search I inquired of a young lady, in the News Department under what area she thought I might find the subject "The Right to be Heard" filed. In the wink of an eye she said it should be filed under "freedom" and I agree with her.

The right to be heard is a freedom as old as these nearby New England settlements. Indeed, almost all of the early colonization of this country took place because people wanted once again to reestablish those freedoms which they felt were a part of their natural heritage. The desire and the need for the right to be heard is as essential today as it was in the early days of our country's history.

I am very certain that the farmer representatives and their technical staff felt that they had done all that was necessary to provide the right to be heard for all when they finished writing the Agricultural Agreement Act of 1937. And even though the Congress at that time, and those agricultural leaders helping to write the Act, gave the Secretary of Agriculture the responsibility for reviewing proposals and petitions he was also given an equal responsibility to give notice of a hearing upon a proposed order.

Nowhere do I read in the Act or in the Code of Federal Regulations that the Secretary or his staff are, under any circumstance, to prejudge a proposal for either promulgating or changing a Market Order. I do find, however, a listing of terms which are to be common to all orders. There is no indication that these terms were meant to be viewed in the same light for each and every order.

As a matter of fact, under a section entitled Regional Application there is spelled out very clearly that the terms of any given order shall be prescribed so far as practicable to give due recognition to the differences in production and marketing in a given order.
Back in 1953, a new producer group in New York State known as the 79 Combined Producer Groups of the New York Milkshed petitioned for a Class III hearing with a proposal that would have established a permanent advisory committee on Class III pricing. The request was denied by officials of the U.S.D.A. who said that the proposed committee would do away with hearings which are a part of the declared policy of the Department of Agriculture. I submit to you that by its denial of a hearing in this matter the U.S.D.A. itself broke its own policy which had been established by the Congress. This was a flagrant early example of the U.S.D.A. judging the merits of a proposal without giving the proponents the opportunity to offer evidence.

The U.S.D.A. for a long time used the divisions which existed among dairy farmers as a reason for not granting hearings. I agree that there were too many contentious proposals made, some only to outbid another organization for publicity purposes. So, to get around this proper objection by the Department, many cooperatives began to move together into federations or large units by merging. Almost every cooperative here in the Northeast joined together in the Coordinating Committee, but at our first hearing representing 26,000 farmers as the Coordinating Committee, the Department representatives demanded a certified copy of the Coordinating Committee minutes as proof that our witness had the right to speak for the people whom he had already sworn he was representing.

So, with farmer disunity no longer a valid reason for denying hearings, the Department now has turned to trying to ease the work load of its employees by saying that it is necessary to have the same kinds of terms and conditions in as many market orders as possible. In the last few years there have been more denials of hearing petitions than we have ever had before.

The Coordinating Committee still represents 26,000 dairy farmers. Most of those farmers and their cooperatives understand completely the kind of milk marketing situation we have here in the Northeast. Most of the proposals for hearings which have been denied have had to do with changing the pricing of surplus milk. Yes, we do want to make some changes even though the changes may have to do with areas we have spent many long years in building. All those areas and effort had to do with putting money into farmers' pockets over the years. All we are asking now is that the burden of balancing be shared by all. Way back in 1933 a report of the Joint Legislative Committee to Investigate the Milk Industry in New York State contained the following paragraph, and I quote from this 1933 document.

"The 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 of market surplus milk in fluid form will be a serious disturbing factor."

Market Order pricing activity by cooperatives on behalf of high returns to farmers has been so successful that manufactured milk prices have become an unbearable burden for those who find themselves left with the responsibility of disposing of every pound of milk.

I went on record several years ago indicating that I felt the cooperatives should provide for all of the work necessary up in the country for
getting milk to the fluid handlers so that the handlers could devote all of their time to the fluid processing and marketing end of our industry.

But the simple fact is that with some continuing irresponsible movement and marketing of milk we have found the surplus burden more than we can take. All we have asked for, really, is relief in the pricing of milk that goes into the processing of butter and powder.

So we need at least three classes of milk again. So, some of it needs to be priced a little differently here than it is some place else. So what!

The documented and proven costs related to operating balancing plants are such that the price relief which we have petitioned for would not result in unfair competition in the marketplace for butter and powder.

Why am I expounding this many words in this particular presentation on this particular subject? Well, it's not because we haven't had plenty of conversation with practically everybody in the Department of Agriculture. But that's the problem, it's only been conversation and nothing more. Our petitions have been denied even after we have changed them to meet as best we could the suggestions made by some of the Department's staff people.

This farmer cannot understand how one day the Secretary of Agriculture can proclaim to one and all that the Department supports the cooperative movement, and in fact says agriculture and all farmers are better off economically because of the existence of cooperatives, and then apparently supports positions developed down in his department that really deny some of the main effort of our oldest and most effective cooperatives.

But this is nothing new. I suppose the Department feels that someday we will give up. But if we do give up, the dairymen in the Northeast and in many other parts of the country had better figure on having a reduced income.

For myself, as a fairly long time cooperative leader, I must say that I cannot give up this fight to maintain a right to be heard, especially when we know we are right.

I could go back in history and point out numerous other examples of where denials of hearing by the Department have cost dairy farmers millions and millions of dollars. The Department has said that there ought to be standard provisions in milk marketing orders. In my very crude examination of the Act, I don't find any such direction. The Department has said that they cannot have a hearing on certain things here or there because places elsewhere would object or complain. On the particular matter which I have discussed previously having to do with our petition for new considerations in the pricing of surplus milk, I can tell you that dairy cooperatives representing 85 percent of the milk produced in this country either have the same problem or are entirely sympathetic to it. As a matter of fact, Department representatives have been in the same room with these cooperatives and heard this fact for themselves.

It is discouraging to have the Department turn us down only last week on a hearing proposal saying that "the value of excess milk should be determined by using the prices actually paid for manufacturing milk plants that compete with regulated plants in the sale of processed milk products," when five days before that letter was written, a staff economist in describing Part II of the
Milk Pricing Advisory Committee Report said that we have remaining only two to five years of fairly reliable competitive pay prices for Grade B milk and that "in the absence of reliable competitive pay prices, strong consideration should be given to product price formulas as a substitute for the Minnesota-Wisconsin series in establishing surplus Federal order prices."

I want to quickly finish up these remarks by reminding the Department that the cooperatives in the Northeast have complied with most of the suggestions that have come out of Washington; i.e., we put most of the dairy farmers in the Northeast into the Coordinating Committee for representation purposes. Yankee Milk has been formed and this also has strengthened the voice of dairy farmers in New York and New England. And in New York a cooperative marketing agency has recently been made operational so that most of the duplicate costs involved in selling raw fluid milk and manufactured products will soon be eliminated.

We have changed our petition on the matter of Class II pricing and still we are refused a hearing. So what are our alternatives now? Well, after all the things we have already done, I find it a little difficult to come up with many alternatives. Lately, I find more and more dairymen who, under the adverse production conditions of the past year and today's price and cost situation, are wondering if now is not a good time to consider revisions in the order program, perhaps even voting it out.

Those of us who are bearing the full burden of balancing these Northeast markets could consider closing those manufacturing plants which I and my members are paying for while those who are non-cooperators or bargaining cooperative members enjoy this market security with little or no cost.

Going back to the beginning of my talk when I mentioned an editorial in Dairynews entitled "The Right to be Heard," several years ago, 1956 to be exact, a hearing was being held to consider a Federal Order for Northern New Jersey and the extension of the New York Order to Upstate New York. Several producer and handler organizations had petitioned for the inclusion of Northern New Jersey as a part of the New York Marketing Area, but this proposition was not included in the hearing notice. That hearing went on for 85 days before a lengthy recess was called to try to break the controversial deadlock.

Secretary Ezra Benson called in the hearing examiner, Mr. Ozzie Hyde, to discuss the situation and to try to figure out a way to expedite the procedure.

It was at that time that Mr. Hyde showed that editorial from Dairynews to the Secretary and said, "Mr. Secretary, the answer is right here. You have denied those people the right to be heard. Let them present their case and we can then finish the hearing."

The rest is history, the combatants filed some compromise proposals, a supplemental notice of hearing was issued and in 17 days the hearing was finished.

I think that the very best that a benevolent government can do, when the people are protesting with all sincerity, is to give them the opportunity to be heard.
There seems to be a concern today among agricultural cooperatives as to their RIGHT TO BE HEARD under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended. We will concern ourselves today with an examination of the Right to be Heard in several areas; namely, 1) the Right to be Heard with respect to the promulgation of amendments to a Federal Order, and 2) the Right to be Heard with respect to the termination of Federal Milk Marketing Orders.

Pertinent Provisions of Agricultural Marketing Agreement Act of 1937

The pertinent provisions of the Agricultural Marketing Agreement Act of 1937, as amended, are:

1) 7 U.S.C. § 608b pertains to marketing agreements and reads in part as follows:

In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, 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 . . .

2) 7 U.S.C. § 608c provides in part:

Orders. - (1) Issuance. - 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 subsection (2) of this section . . .

(2) Commodities to which applicable. - Orders issued pursuant to this section shall be applicable . . . to . . . (m)ilk . . .

(3) Notice and hearing. - 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 products thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) Finding and issuance of order. - 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 . . . 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.
(15) Petition by handler and review. - (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with the law.

(17) Provisions applicable to amendments. - The provisions of this section . . . applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Some Basic Principles

We must keep some basic principles in mind when examining the "Right to be Heard" and when dealing with the Secretary of Agriculture in the administration of the Agricultural Marketing Agreement Act of 1937.

"The background and legislative history of this legislation leave no doubt that Congress gave the Secretary broad discretion in its administration. See United States v. Rock Royal Coop., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446 . . . ." Queensboro Farms Products, Inc. v. Wickard, 137 F.2d 969, 977 (2nd Cir. 1943).

Judge Frank in Queensboro Farm Products, supra 980, 981, recognized the broad discretion of the Secretary in the administration of this very law when he said:

"Considering the complexities of administration of such an Act, and the plain intention of Congress to give the Secretary wide discretion in devising regional milk plans (and the classifications incident thereto), the courts must be slow to intrude on his exercise of that discretion, if for no other reason than that, being inadequately staffed, they are incompetent to undertake the task of constructing and supervising milk marketing programs. The Supreme Court has admonished us that interpretations of a statute by officers who, under the statute, act in administering it as specialists advised by experts must be accorded considerable weight by the courts. If ever there was a place for that doctrine, it is, as to milk, in connection with the administration of this Act because of its background and legislative history. The Supreme Court has, at least inferentially, so recognized. See United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446, where, too, the court stressed the wide scope of the Secretary's validly delegated discretion under this very statute."
The responsibility of selecting the means of achieving the statutory policy and the relationship between the remedy and the policy are uniquely matters for administrative competence. As early as 1946 the United States Supreme Court in American Power & Light Co. v. SEC, 329 U.S. 90, 112, 113 (1946), stated:

"It is a fundamental principle, however, that where Congress has entrusted an administrative agency with the responsibility of selecting the means of achieving the statutory policy 'the regulation of remedy to policy is peculiarly a matter for administrative competence.' Phelps Dodge Corp. v. National Labor Relations Board, supra, 313 U.S. 194, 61 S.Ct. 852, 85 L.Ed. 1271, 133 A.L.R. 1217. In dealing with the complex problem of adjusting holding company systems in accordance with the legislative standards, the Commission here has accumulated experience and knowledge which no court can hope to attain. Its judgment is entitled to the greatest weight, while recognizing that the Commission's discretion must square with its responsibility. Only if the remedy chosen is unwarranted in law or is without justification in fact should a court attempt to intervene in the matter. Neither ground of intervention is present in this instance."

To the same effect is Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 613-14 (1950).

Ordinarily, the courts and the agency involved should not struggle with each other for recognition, as one court put it, as an "ameliorating system of justice." The United States Supreme Court, in United States v. Morgan, 307 U.S. 183, 190-91 (1939), set forth the guiding principle which you may be cognizant of, when it stated:

"The one is that in construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action. Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim . . . ."

The test of reasonableness or substantive due process is a check upon such administrative discretion. The test seems to be whether the means selected by the Secretary to achieve the statutory policy bears a reasonable and substantial relationship to the accomplishment of such policy and whether such means are arbitrary and capricious. Nebbia v. New York, 291 U.S. 502, 525, 537 (1934); Lapides v. Clark, 176 F.2d 619 (D.C. Cir. 1947), cert. denied, 338 U.S. 860 (1949).
Due process does not require that a complaining party be entitled to notice and a hearing in connection with every determination made by the Secretary or his designee. For example, where a handler petitioner is aggrieved because no hearing is held before the institution of an enforcement proceeding against him under § 8(A)(6) of the Act, due process does not require a hearing in this area. In Re Gem Dairy, 23 A.D. 18, 31 (1964); aff'd, United States v. Brown, 331 F.2d 362 (10th Cir. 1964). Nor is a handler under the Act entitled by due process to notice and hearing in connection with determinations made by a Market Administrator with respect to such determinations before they are made. United States v. Fred A. Brown, 23 A.D. 1323, 1329, 211 F. Supp. 953 (D. Colo. 1962), 217 F.Supp. 285 (D.Colo. 1963); In Re Willow Crossing Dairy Farm, Inc., 29 A.D. 1007, 327 F.Supp. 798 (W.D.Pa. 1970). Section 8(c) (15)(A) of the Act provides him with a proceeding for de novo review of such determination. Cooperatives, however, do not have this (15)(A) proceeding available to them. In Re Producers Creamery Company of Springfield, AMA Docket No. M 67-1, 23 A.D. 515 (1964). Handlers have argued in the past that failure to afford notice of an opportunity for hearing on a Market Administrator's determination is a violation of the Administrative Procedure Act (5 U.S.C. 1001 et seq.) See In Re Banner Dairies, 15 A.D. 355 (1956). Handlers are afforded due process in a formal hearing under the proceeding afforded them pursuant to 8(c) (15)(A) of the Act. In short, due process does not require a hearing at every stage of a controversy. Yakus v. United States, 321 U.S. 414 (1944).

The Secretary has promulgated Rules of Practice and Procedure governing proceedings to formulate marketing agreements and marketing orders. 7 Code of Federal Regulations 900 et seq.

With the foregoing principles in mind and the rules of practice and procedure governing proceedings formulating marketing agreements and orders, we would conclude that it would be extremely difficult, if not impossible, to find an instance where it could be argued successfully that the Secretary in the administration of the Federal Order Program has abused his discretion when he declines to grant a hearing on a proposal to formulate and promulgate a Federal Milk Marketing Order in an area. Cooperatives, for example, I am sure, have frequently asked the Secretary to promulgate Federal Orders in certain areas where they feel there is a community of competition between regulated and unregulated handlers, where they believe the marketing area of an existing Order should be expanded, and where they believe that orderly marketing of milk would be attained thereby.

The Secretary in accordance with the Rules of Practice, makes an investigation to see if, "in his opinion," the proposed Marketing Order will tend to effectuate the declared policy of the Act. If he, in his absolute and sole discretion, determines that such proposed Order will not tend to effectuate the declared policy of the Act, he denies the application and generally states just that - i.e., that the proposed Marketing Order will not tend to effectuate the declared policy of the Act. This procedure is that set out in 7 Code of Federal Regulations § 900.3 which reads in part as follows:
(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

If, on the other hand, he determines that such an Order is in keeping with the objectives of the Act, then he will grant a hearing, a procedure with which we are familiar.

I know there have been times when one thinks he knows more than the Secretary as far as the administration of the Federal Order Program is concerned. While he sees the broad picture constantly, you necessarily are concerned with your local interests. Oftentimes, what is good for Hartford may not be good for Possum Trot, Kentucky. I do not believe that the Secretary who is charged with the administration of the Federal Order Program under the Act should have to have a prehearing proceeding on every matter or proposal that every cooperative would want. Rather than have him administer the program, we would then have a hundred administrators, be they cooperative claimants or handler claimants.

Insofar as the termination of Federal Orders is concerned, sections 608c (A) and (B) of the Act are applicable. Section 608c (16)(A) provided that whenever the Secretary finds that an order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, then he shall terminate or suspend the operation of the order or such provision thereof. Ordinarily, the Secretary in this instance asks for views, data, and arguments from interested parties concerning such suspension or termination. Section 608c (16)(B) of the Act is mandatory, whenever a majority of the producers in an Order area requests the Secretary to terminate it. Section (12) of the Act provides that the cooperatives may block vote its dairy farmer members involving termination of an order.

Today, the attacks on the Federal Order Program and the Act under which the program exists seem not to come from the processors. On the contrary, cooperatives in their own fights with each other have undertaken to attack the Act and the Order provisions emanating therefrom. Lehigh Valley Cooperative Farmers, Inc. attacked successfully the compensatory payment provisions of the Federal Order Program. Lehigh Valley Coop. Farmers, Inc. v. United States, 370 U.S. 76
(1962). A most difficult and worthy goal is to have people with the expertise in the milk business adjudicate the Federal Order Program structures which they have so carefully helped to build under the expertise and guidance of the Secretary and his marketing specialists under the Federal Order Program. Whether or not this happens is solely your choice.
Since "The Right to be Heard" is a broad subject, even within the scope of the federal milk order program, I asked Bob Story what aspects of this subject he thought would be of special interest to this group. He responded with three suggestions:

1) The Right to be Heard on a proposal before it is denied and not included in a notice of hearing.

2) The Right to be Heard at a hearing irrespective of whether the testimony or evidence to be offered is repetitive or cumulative, and

3) The responsibility of the Secretary to weigh the evidence or consider the public interest, irrespective of the "one-sided" character of the testimony and evidence in a hearing.

All the suggestions relate to the "Rule making or quasi-legislative functions" of the Secretary rather than to his review or quasi-judicial functions which are also involved in the administration of milk orders. I will be glad to consider these particular topics; however, I hasten to add that the avenues of communication that are so essential in keeping fully informed as to what is happening and what people are thinking are not confined, and should not be confined, to participation in hearings. More will be said about that later.

The logical starting point for such a discussion is the statute under which milk orders are issued. I am not sure everyone is generally familiar with the provisions of our statute. Under Section 8c(3) the Secretary is required to give due notice and opportunity for a hearing on a proposed order "Whenever he has reason to believe' that the issuance of such an order will tend to effectuate the policy of the Act." The next paragraph goes on to state, in substance, that if the Secretary finds "Upon the evidence introduced at such hearing" that "the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of the Act," he shall issue an order. Certain other findings may also be required. These are simple and explicit provisions. They differentiate these rulemaking hearings from many other types of rulemaking procedures followed by both Federal and State agencies.

I think it would be helpful, as well as interesting, to review the background of these statutory provisions. The Federal milk regulatory program began under the Agricultural Adjustment Act of 1933. Those regulations took the form of marketing agreements which were supplemented by licenses. Licenses were intended to reach the members of the industry in a particular area who did
not voluntarily become parties to a marketing agreement. The Act of 1933 authorized the Secretary to enter into marketing agreements "after due notice and opportunity for a hearing to interested parties," but there was no requirement that a marketing agreement be supported by evidence adduced at such a hearing. The provision authorizing him to issue licenses did not contain any requirement for a hearing. The only hearing specified in connection with a license, was when there was consideration being given to the revocation of a license. Of course, such a revocation would normally affect only individual licensees and thus involve an action more akin to adjudication than to rulemaking. The Act of 1933 fell before the onslaught of attacks on the New Deal legislation. The difficulty was, among other things, that it contained an unconstitutional delegation of authority to the Secretary.

The earliest proposed amendments in 1935 to correct the defect, concerning which there are published hearings before the committees of Congress, were in the form of two bills. The one introduced in the Senate was known as S. 1807 and the one introduced in the House was H.R. 5585. Each of these bills provided specific authority to issue licenses but, for the first time, they required a hearing before the issuance of a license. In testifying before the House Committee on Agriculture, Chester Davis, who was then the Administrator of the AAA, made the following statement:

"First, there would be added a legal requirement for due notice and opportunity for hearing prior to the issuance of licenses. As a matter of fact, we always have limited ourselves in that way by administrative practice but the amendment would simply write this limitation into the law because under 8(3) of the existing law, there is no such requirement for notice and hearing as is provided in the bill (Sec.9 (3))."

Thus, it is apparent that the Department of Agriculture was committed, as a matter of policy, even in the absence of a statutory requirement, to offer interested parties the right to participate in hearings in the development of milk regulations. The above mentioned bills were never enacted. In rather rapid succession, other bills were introduced. One of these was H.R. 8052. We have no published hearings on this bill, but there was a published Committee Report and it contained the following statement with respect to hearings:

"Specific provision is made that there must be due notice and opportunity for a hearing prior to the issuance of a license. No such requirement is stated in the present law." (Report 952, House of Representatives, 74th Congress, First Session, May 15, 1935)

Shortly thereafter a proposed substitute having the same number, H.R. 8052, was offered in the Senate by Senator Smith. One of the significant differences between the substitute bill and the one on which the House Committee Report was issued, was the substitution of an "order" instead of a "license", as the instrument of regulation. This had no particular significance in our discussion.
In the confidential Committee print of this bill, dated June 5, 1935, the following language appears:

"(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order or an amendment to an order, if he finds, and sets forth in such order or amendment, upon the evidence introduced at such hearing . . . that the issuance of such order or amendment, and all of the terms and conditions thereof, will tend to effectuate the declared policy of this title, with respect to such commodity or product."

Later variations of the bills which finally culminated in the Act of 1935 dropped the phrase "or an amendment to an order" from this section. This was because another section of a later bill made the procedural requirements applicable to an order, also applicable to an amendment. However, the remaining language of this section, which I have just read, was included in the Act of 1935 and in the provisions of that Act which were reenacted by the Marketing Agreement Act of 1937.

You will notice that the Senate version of this provision added the phrase "upon the evidence introduced at such hearing." It is this provision of our present Act which sharply differentiates the present hearing requirement from the earlier requirement. The Secretary was not then required to justify order provisions on the basis of evidence introduced at the hearing. Ever since 1935, such justification is absolutely mandatory for an order to be valid.

In these hearings, witnesses are sworn and cross-examination is permitted. Also, after the close of such a hearing and prior to the issuance of an order, no Departmental employee is allowed to discuss the merits or the evidence with any party interested in the results of the proceeding. These aspects of the law and of the hearings have caused many people to look upon such hearings as a "trial type" of hearing as distinguished from "an information gathering" or "advisory type" of hearing. Of course, these characterizations are merely descriptive titles. But, notwithstanding the efforts of some elements of the industry, or of the Bar itself, to engraft on all these hearings all the elements of a judicial type hearing, it has always been the position of the Department that these hearings are essentially legislative in character and not judicial.

Before commenting on the three topics assigned to me, I should call your attention to two more legal documents which have a direct bearing on my discussion.

The first is the Administrative Procedure Act which was passed in 1946. While this Act did not, itself, require that a hearing be held in order to formulate a regulation such as a milk order, it did provide a specific procedure governing all agency hearings where the rules to be issued were "required by statute to be made on the record after opportunity for an agency hearing." It was the language introduced for the first time in 1935, as I have previously explained, which makes our order formulation proceedings subject to the APA.

In brief, such hearings are to be conducted by an Examiner whose employment is in accordance with standards established by the Civil Service Commission and who are removable only for a good cause and after an opportunity for a
hearing and upon the record of such hearing. In other words, in the conduct of their work as Hearing Examiners, they are free and independent of administrative control of the Department. These Examiners conduct both rule-making and quasi-judicial hearings. The APA specifically sets forth the powers of such Examiners which includes the power to rule upon offers of proof and to receive relevant evidence and generally to regulate the course of the hearing. It also provides that "every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence." It goes on to reassert the requirement that no order is to be issued except upon consideration of the whole record . . . and "as supported by and in accordance with the reliable, probative and substantial evidence."

Before the APA, our order formulation hearings were generally conducted by an attorney from the Office of General Counsel, who was specifically designated to act as a Presiding Officer for a particular hearing. Of course, this practice ceased with the passage of the APA in 1946. From the very beginning the Secretary has issued rules and regulations governing the conduct of rulemaking hearings. These were published in the Federal Register and now appear in the Code of Federal Regulations in which all milk orders are included. They provide the guidelines for the conduct of the hearing consistent with the basic requirements of the APA. The regulations, of course, are too comprehensive to consider in detail in a discussion such as this. Suffice it to say, the Examiner is authorized "to prevent undue prolongation of the hearing . . . may limit the time any witness may testify to the same matter or the amount of corroborative or accumulative evidence. He also shall, in so far as practical, exclude evidence which is not the sort upon which responsible persons are accustomed to rely."

As I understand the first topic, it would probably be more accurate to state it as: "Does a person who is entitled to submit a proposal for a hearing have a legal right to some kind of a hearing before his proposal is rejected for whatever reason." The present rules do not provide for this intermediate step nor do they specify that the Secretary must hold a hearing on every proposal submitted. I doubt if those interested in this question generally would go this far. It appears, however, that there are some who feel that they should have a 'second bite at the apple' before rejection of a proposal is final.

This whole problem, as I see it, lies in the "field of administrative discretion." The statute, itself, does not require the Secretary to hold a hearing because someone has requested him to do so. The requirement for a hearing is only a condition prerequisite to the issuance of an order. Consequently, it presumes some prior conclusion by the Secretary that an order or an amendment could be useful in carrying out the purposes of the Act. You will recall that the statute says "whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to 'effectuate' he shall give due notice." Whenever I say "order" my remark also applies to an amendment to an order. So the statute clearly contemplates the exercise of judgment on the part of the Secretary before he initiates a hearing. If any person did have this kind of a "right", then every person who can submit such proposals would have an equal right. If a hearing on whether or not the proposal should be rejected were to be granted, the question immediately arises as to what kind of a hearing is to be held. Would it require prior publication in the Federal Register? Would the decision or conclusion resulting from such hearing
have to be supported by the evidence presented? Would it have to be presided over by an Administrative Law Judge or could it be a less formal type of hearing which would be more advisory in character but one in which views could be expressed either orally or in written form? I do not see how an Administrative Law Judge could add anything to a proceeding where the ultimate decision was essentially an exercise of discretion by the Secretary.

It does not require much imagination to realize that such a "right" or "privilege" could be utilized to prevent or unduly postpone a hearing on other proposals that were proper. This could strangle expeditious action by the Secretary. Now proposals for hearing are submitted and rejections are handled without a formal hearing. However, existing regulations do require that if the Secretary decides not to accept a proposal for a hearing, he is to notify the proponent promptly and provide him with a brief statement of the grounds for the denial. A decision must be made, and I believe the legitimate interests of all parties can be served under the present procedures.

Some proposals we receive for hearings are illegal on their face and could not be adopted irrespective of the evidence. For example, the Secretary cannot by statute fix resale prices. Some proposals are duplicates of similar proposals on which hearings have been held and turned down in other markets, and sometimes even in the same market. If conditions have not changed, then it seems a waste of time and effort to grant a hearing to go over the same kind of evidence only to reject it a second time.

Many times it is obvious that hearings are requested mainly for the purpose to have a forum even when the proponent knows the proposal will be rejected.

The second topic concerns the right to be heard in a hearing, irrespective of whether the testimony is repetitive. I have already touched on this in connection with the responsibility of the Administrative Law Judges. Departmental officials do not control these hearings. The Administrative Law Judge exercises considerable discretion, not with respect to the final decision to be made on the basis of the record, but discretion as to how the hearing is to be conducted and what evidence is to be received. Both the Administrative Procedure Act and our longstanding Rules and Regulations clearly authorize him to exclude irrelevant or repetitive testimony. In our experience thus far, I think it is safe to say that these presiding officers have frequently leaned over backwards to admit testimony, even though it was repetitive and even though it tended to prolong the hearing, rather than to be arbitrary in precluding its submission.

In some of our larger markets it has been customary to arrange a series of hearings at various localities for the convenience of producers who, in many cases, could not attend if the hearing was held in only one location. Of course, if we arrange for one session or several, the whole series constitutes a single hearing and results in a single hearing record. It is understandable how a witness might resent being curtailed in offering testimony because it is repetitive of testimony given elsewhere. Also, there was a feeling, particularly in some of the hearings held many years ago, that every individual farmer had an inalienable right to speak his mind to the government in a public hearing, especially if a news reporter or photographer were present. Some wished to do no more than to get up and say "I'm for it" or "I'm against it." Consumers in certain areas, particularly if organized, were also very active. Of course, their right to be heard is not questioned. It is primarily a question of how often and how much.
In dealing with this problem, we are faced with the situation which was very aptly described by Justice Oliver Wendell Holmes, also an eminent New Englander, who stated for a unanimous Supreme Court "where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption ... There must be a limit to individual argument in such matters if the Government is to go on." (239 U.S. at page 445.)

The inevitable answer to the question as to whether every person should have a right to be heard, irrespective of whether his contribution is cumulative, must be in negative.

The third topic concerns the "responsibility of the Secretary to weigh or consider the public interest, irrespective of the one-sided character of the testimony in evidence in a hearing." Let me turn again briefly to the statute. Section 602 contains the declaration of policy. It consists of five paragraphs. The first paragraph indicates as a goal the maintenance of "such orderly marketing conditions as will establish, as the prices to farmers, parity prices ..." This price standard, insofar as milk is concerned is further elaborated in section 608c (5)(18). No mention is made of the "public interest" in paragraph one, but that phrase does occur in paragraph (18), on which I will comment further in just a moment.

Paragraph 2 of section 602 authorizes the Secretary to correct the then current level of prices as rapidly as he deems it "to be in the public interest" so as properly to "protect the interest of the consumer." This language suggests that there may be some difference between the "interest of the consumer" who is certainly a part of the public and the "public interest" which may be more encompassing in its concept.

The third paragraph of section 602 deals primarily with commodities other than milk and needs no comment. The fourth paragraph authorizes the exercise of the Secretary's power in such a way as to provide an orderly flow of supply through its normal marketing season as will tend to avoid unreasonable fluctuation in supplies and prices. This is to be done "in the interest of producers and consumers." No specific mention is made here of the "public interest" but I am sure it would be conceded that the interest of "producers and consumers" embraces much, if not all that might be covered by the term "public interest."

The fifth paragraph of section 602 permits continuation of a marketing program for the remainder of a marketing season or year "as will tend to avoid disruption of orderly marketing" and be in the "public interest."

I am not altogether sure what either Bob Story or those he speaks for had in mind when they included the term "public interest" in this topic. Two things are fairly clear, however. First, consideration by the Secretary of the "public interest" in developing a milk program, does not entitle him to exercise any regulatory power other than those powers conferred on him by the same statute. In other words, it does not constitute a broad grant of power, the specific application of which is derived from his concept of what is the "public interest." On the contrary, the Secretary is admonished to achieve certain ends "through the exercise of the powers
conferred upon him." Second, the Secretary's duty to act in the "public interest" does not entitle him to issue an order or an amendment which is not supported by evidence in the record of the hearing which he is required to hold, even though he may feel that certain provisions, not so supported or perhaps even proposed, would be in the "public interest."

Consequently, if a hearing record might be characterized as "one-sided" as this topic suggests, the Secretary cannot lay that record aside and rely on his own ideas as to what amendment would be in the "public interest". He would either have to act on the "one-sided" hearing record or do nothing.

You will notice that I have been careful to emphasize that the Secretary may not issue an amendment unless it is within his delegated powers and is supported by evidence in a hearing record. It should also be emphasized that what is in a record, even a "one-sided" one, cannot compel the Secretary to issue an amendment which he does not believe will tend to effectuate the purposes of the Act. That is where the discretion and judgment of the Secretary, as an expert in this particular field of regulation, comes into play. It also points to a fundamental difference between a rulemaking and an adjudicatory proceeding.

By law, the Secretary must consider the "public interest" in every amendment proceeding under the AMA act of 1937. This consideration will affect his appraisal of the evidence before him and the complexities of the entire problem when he is shaping an order. But the requirement that whatever he includes as a mandate which somebody must obey, must be supported by a hearing record, does not mean that if he declines to adopt a proposal or declines to include a provision in an order, he must also find support in a hearing record for not taking such action. Otherwise, the discretionary powers of the Secretary could be reduced to a nullity. If such were possible, a rulemaking hearing would serve little more than the purpose of recording the views in favor of, or opposed to, a particular proposal. And, it would come dangerously close to permitting a non-governmental authority to determine the content of an order. Under such circumstances, questions of improper delegation of authority would surely arise.