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# An Analysis of State Laws Designed to Effect Economic Control of the Market Milk Industry

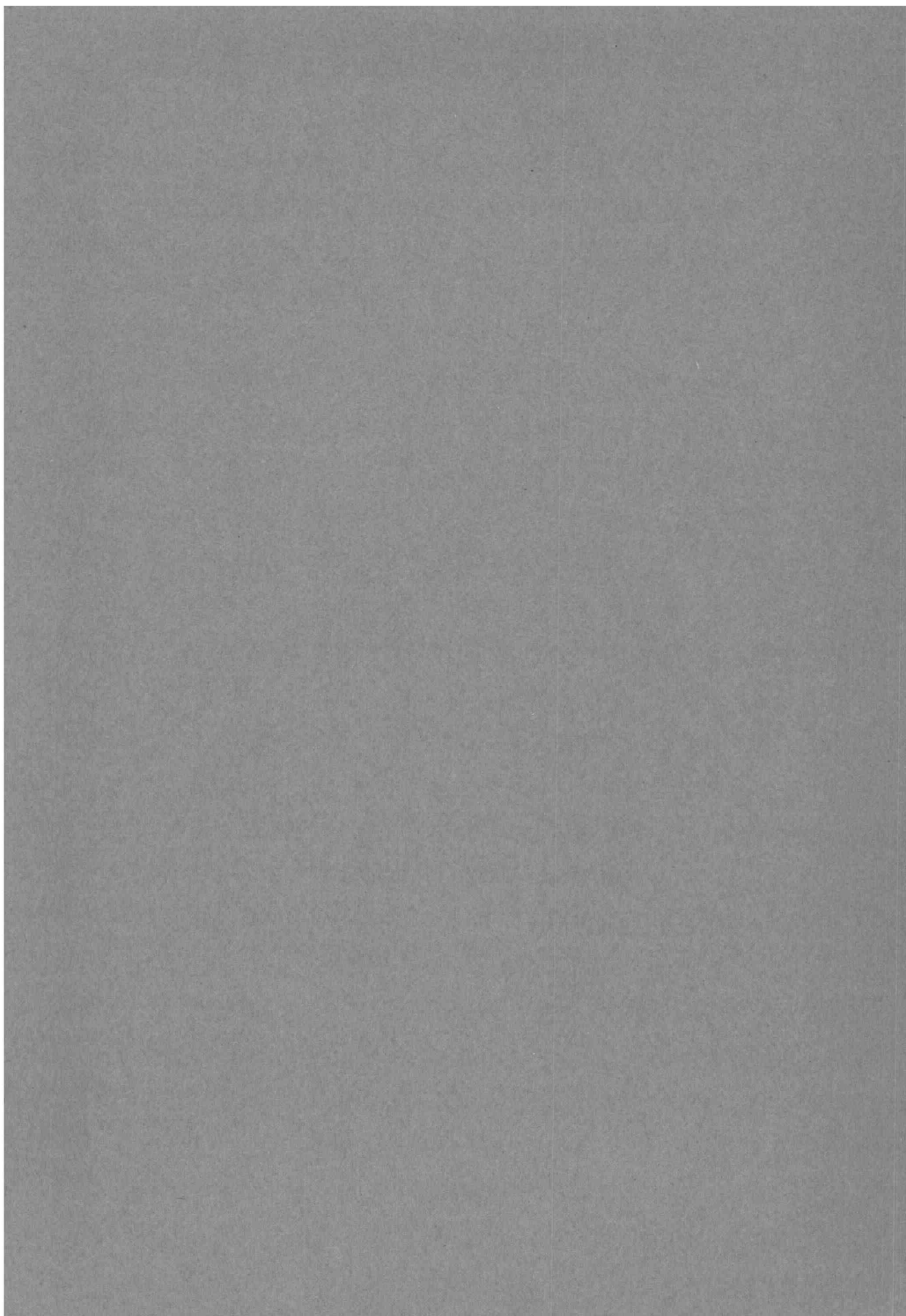
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OREGON STATE COLLEGE  
CORVALLIS, OREGON



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## FOREWORD

The market milk industry, like many others, has been influenced by the pronounced changes in the thinking of courts and legislators with respect to the established *laissez faire* principles of business. The economic maladjustments of this period caused many groups to clamor for state protection from economic competition. The market milk industry was one of the first major industries to feel the repercussions of this economic unbalance. Milk strikes and violence were widespread, especially in the larger cities. Consumers and producers suffered in common. The consumers were left without an adequate milk supply and the producers without adequate prices. Economic control in the form of minimum pricing and market regulations appeared to be the only immediate means of stabilizing the fluid milk industry.

The vital importance of milk to health and the dependence of the housewife on supplies from distant sources have given rise to the doctrine that milk is a public utility and should be regulated as such. The public has demanded better sanitation in the handling of milk, but efforts at better sanitation have been interwoven with economic considerations.

New York is credited with being the first state to enact a milk control law (1933) with minimum price fixing provisions. Twenty-five other states soon followed with parallel legislation. Similar control legislation has become common to many other industries since 1933. The majority of the state milk control laws have withstood almost constant constitutional attacks. The laws have been upheld primarily on the ground that economic controls of the fluid milk business are necessary to protect the public health and welfare.

The Oregon Milk Control law of 1933, as amended, has been a political issue since its passage. Legislators have been elected and defeated on the issue of support of the Milk Control Act or opposition to it. The Act has barely survived several court and legislative attacks and one general referendum. It is still the subject of active controversy, both political and economic.

This analysis of the existing state milk control laws was undertaken with the hope that the experience of the nineteen states that have such legislation would be useful to all those persons and groups that are interested in establishing, perfecting, or administering milk control legislation.

E. L. POTTER, Head  
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## SUMMARY

Certain phases of this report are given in outline form in the Appendix. The essential facts in the descriptive analysis follow.

1. Efforts to regulate the fluid milk industry began in Massachusetts in 1856. The Massachusetts law like all other state milk laws passed prior to 1933 related to milk sanitation. Sanitary regulations were originally introduced to protect public health. There appears to be some evidence that sanitary regulations are used in some markets as economic regulators to restrict milk from entering the market, thereby maintaining, for all intents and purposes, a closed market for the benefit of a small percentage of all the producers.

2. The economics of the fluid milk industry is so closely related to the general economy that the economic position of the industry seems to correspond to the status of business generally. The turbulent economic conditions in the early part of the past decade appear responsible for the accompanying chaos in the milk industry. Some of the economic maladjustments contributing to the unsettled conditions in the industry are: (a) depressed farm prices, especially for cheese, butter, and evaporated milk, in relation to fluid milk prices; (b) overproduction resulting from low feed prices and dairy-men trying to maintain their decreasing incomes by increasing unit volume; (c) lack of alternative economic opportunities for capital and labor resulting in an overexpansion of distribution facilities, which are still maintained in some markets; (d) decreasing per capita consumption of fluid milk; (e) a gradual change in the structure of our population manifested in the declining percentage of young people; and (f) high cost of production resulting from stringent sanitation requirements.

3. Federal and state legislation designed to exercise economic control over the fluid milk industry was sponsored primarily by producer groups that desired to obtain a greater share of the consumer's dollar, thereby enabling them to maintain a more favorable standard of living. These economic regulations were introduced as emergency measures during the depression period (1933-1935) and most of them continue. Legislators justified economic regulation of the fluid milk industry on the bases that it was necessary (a) to maintain a pure and wholesome supply of milk for human consumption, and (b) to maintain economic stability in the industry, thereby avoiding some of the social and economic consequences that might have resulted from a complete dislocation of the established production and marketing channels and from the resulting unemployment during a period of widespread economic distress. Based on a study of the several state milk control laws and the

administration of such laws, the authors believe that the major benefits of such controls have gone to the fluid milk producers. This has been accomplished by reducing dealer margins. It is doubtful whether the consumer has obtained any tangible benefit from such legislation.

4. Members of milk control agencies in each state are appointed by and subject to removal by the governor. The administrative and enforcement staff in most states is selected by the control agency. Membership of the control agency varies in number from 1 to 7 and in fifteen states is selected from the members of the milk industry, although the majority of the state laws require the selection of at least one board member who is not connected with the fluid milk industry. The Oregon law requires that no member of the control board shall be in any way connected with the fluid milk business. Compensation is usually limited to per diem and traveling expenses; four states, however, provide annual salaries for board members. Local milk committees are provided for by four states to aid the state control agency in the administration and enforcement of the law.

5. The control agency in fifteen of the states is financed principally by fees levied on the members of the industry. Only one state appropriates all the needed funds from the state treasury without levying fees. Several of the larger states have had to appropriate funds to supplement the monies collected from fees.

6. Powers of the control agency are delegated to it by the legislators and in every state are extremely broad. The power of establishing rules and regulations for a specific market is ordinarily given the control agency. Six state laws provide that before the control agency may function in a specific market, members of the industry must give a majority approval. In the remaining states the agency may act on its own initiative. Investigational, licensing, and bonding powers are bestowed on the control agency for the purpose of protecting certain groups, which in most instances are the producers. Because demoralizing trade practices were one of the evils operating in the milk markets during the depression period, every state act provides that the control agency shall have discretionary power to control such practices. The right to deny, suspend, or revoke a license is granted the control agency in almost every state. While these powers rest with the agencies, such severe penalties are seldom used against violators, because they fail to meet with the wholehearted approval of the public. The power to designate marketing areas and the licensing power can be and are used to maintain a closed market and to prevent a free movement of milk from one market area to another.



7. In all but five states standards for establishing prices are prescribed for the control agency. These follow: (a) cost of production and distribution, (b) fair return to producer and distributor, (c) balance between production and consumption, and (d) purchasing power of the public. Only recently has much attention been given the problem of fixing equitable prices for fluid milk based on the prices obtainable for manufacturing milk. California establishes minimum prices on market butterfat by formula. This formula definitely relates the price of market butterfat to factory butterfat. It is a workable plan and it deserves the thorough attention of other state control agencies.

8. A system of market-wide pooling appears to be essential in order to obtain a uniform payment per unit to all producers in a particular market. Individual-dealer type pools provide equalized payments to producers supplying one dealer, but the returns of all producers in a particular market are not necessarily the same for a similar quantity and quality of milk. The basic-surplus pricing plan or the combination price plan, in which the basic-surplus and class-use system are combined, appears necessary in the larger markets. These plans tend to promote more uniform yearly production and to avoid burdensome surpluses during the high-producing months. Producer quotas used in conjunction with these two price plans are employed deliberately by several control agencies to discourage surplus milk from moving into markets.

9. Resale price fixing, employed at one time by all the states whose milk laws are in effect, has been completely discarded by two states and in several other states minimum resale price fixing is under severe attack. The effectiveness of minimum resale price fixing is especially dependent on public support or public apathy. The principal attacks against minimum resale prices revolve mainly on the point that they are used only to fix the "spread" for the distributors and as such the consumer does not benefit from distributor competition. Since 1937 the Federal Government has not provided for resale prices in any agreements or orders in any of the markets that it is administering. The early Federal marketing agreements established before 1937 carried resale price provisions, but most of them are not being enforced.

10. The majority of the laws provide for adequate legal remedies for those who feel that they are injured by an action of the control agency or by the provisions of the law. Considering the large number of appeals by members of the industry from decisions of control agencies or lower courts, the percentage of appellants that have successfully challenged the laws or regulations are very few. Satisfactory means are likewise provided for enforcing the several laws. The control agency in almost every state is also

granted the power of injunction, without having to show cause that a legal remedy exists. Most of the laws specify certain acts as being unlawful, principally the buying and selling of milk under conditions and prices other than that specified. Penalties for violation are usually limited to fines and/or jail sentences, and in some states the fines increase in size with subsequent offenses. The harshest penalty, of course, is to refuse to grant a license, or to suspend, or to revoke a license. Specific penalties are provided for failure to answer a subpoena.

11. It has been established by many court decisions that the milk industry does not fall into the category of a public utility, but as it is greatly concerned with the public interest it can be controlled under the police power of the state. Continuous favorable court decisions have definitely established the power of the state to regulate the economic activities of the industry, including price maintenance and market control. Several state laws have been declared invalid primarily on the legal ground that there was an undue delegation of legislative or judicial powers.

12. Such administrative problems as pseudo-cooperatives, establishment of equitable producer and resale prices, the control of milk shipped in interstate trade, and satisfactory pooling mechanisms are still to be solved in many states. These problems no doubt will require additional legislation, educational campaigns, and closer cooperation among the several public control agencies, if the administrative and enforcement problems are to be lessened. Constitutional limitations will continue to be a barrier to certain types of regulation.

13. State milk control laws are considered by many people to have stabilized milk markets and to have established favorable returns to producers. It is questionable whether they can be considered lasting remedies. The course of future controls in the industry is not known, but the trend of thought of the Wisconsin legislators may provide a clue as to the thinking of some law-making bodies. (16) In 1935 a bill was presented to the Wisconsin legislature to permit cities to engage in the distribution of milk with the hope of reducing the distributing "spread." The bill passed the assembly and lost in the senate by five votes. Two years later a similar but more detailed bill was introduced and recommended by the legislative committee for passage. This measure was lost in *sine die* adjournment.

# An Analysis of State Laws Designed to Effect Economic Control of the Market Milk Industry

## INTRODUCTION

In a recently published statement on the milk problems, Mr. H. V. Noyes, Director of Agriculture and Markets for the State of New York, states: "I think I can truthfully say that no agricultural problem in the northeastern United States is so much discussed and so little understood." (18) This statement well exemplifies a situation that can be applied to any area in the United States where an orderly system of milk marketing has been attempted or where it is a problem to be considered.

It is the objective of this report to bring about a better understanding of the problems of economic control in the fluid milk industry by analyzing the efforts made by legislators to alter existing situations for the welfare of all or of certain groups. The opportunities for competition have been obstructed in this field of activity as in many others, and as a result competition has been prevented from accomplishing its supposed objectives. In asking for controls the producers' associations and large dealers sought to eliminate several forms of competition that were commonly called "chiseling," "bootlegging," or "cut-rate competition."

The manner in which these controls have eliminated or attempted to eliminate such demoralizing practices in the several markets will be presented in the subsequent analysis of state and municipal economic and sanitary controls that have been applied to the fluid milk industry from the time the first milk law was passed in 1856. At that time the United States had a population of approximately 30,000,000 which was supplied with milk from approximately 8,500,000 dairy cows, or one cow to every 3.5 persons. Today, with hundreds of milk laws in effect and the milk industry being classed by many as one needing public utility regulation, we have more than 25,000,000 dairy cows to supply 131,409,881 people, or one cow for every 5.2 inhabitants. Even though we had a tremendous increase in population in that 85-year period, the significant change and one of the chief causes of the predicament of the fluid milk industry in the early 1930's was the fact that urban population increased from 21 per cent in 1860 to 56 per cent in 1930.

Emphasis is placed on state milk control laws that have been applied to the milk industry, especially with reference to the mechanical operation of

the laws, price controls affecting consumers and producers, provisions for equalizing payments to producers, and the success in administering the laws. We have now had in the United States about 8 years' experience with this sort of regulation; we can therefore better evaluate the various features of such regulation.

The early milk laws prior to the crisis of 1929 had a definite social aspect attached to them in that they attempted through sanitary regulations to prevent unwholesome milk from entering consumption channels, whereas the more recent legislation, resulting to some extent from increasing sanitary regulations, is primarily of an economic nature promoted for the sole purpose of bettering the economic status or of maintaining the status quo for a particular group in the milk industry. Whether the regulations are primarily social or economic, legal controls are usually justified on the premise that milk is a necessity.

The value of milk as a food has been known to scientists a great number of years. The first public acclaim made relative to the importance of milk as a human food by a member of the judicial fraternity was in 1914. Justice Dunn of the Illinois Supreme Court rendering a decision on pasteurization said, "There is no article of food in more general use than milk; none whose impurity or unwholesomeness may more quickly, more widely, and more seriously affect the health of those who use it. The regulation of its sale is an imperative duty that has been universally recognized." (24)

### LEGAL ASPECTS OF SANITARY REGULATION

It is significant that prior to 1933 state regulation of prices in the dairy industry was unknown. Regulation in the distribution and handling of milk centered almost entirely around questions of health and sanitation.

The first law on milk in this country was a Massachusetts act of 1856 prohibiting the adulteration of milk. Similar legislation followed in Washington, D. C. in 1871, and in Illinois in 1879. A Boston regulation is said to have prevented the use of distillery slops for feeding cattle and to have appointed an inspector to enforce this requirement. Minnesota passed a comprehensive dairy inspection law in 1895. The city of Chicago in 1908 passed an ordinance requiring pasteurization of all milk except from tuberculin tested cattle, followed by New York City in 1914 requiring pasteurization of all milk except certified. In the same year a sanitation control act was passed in New York. (24)

A court decision in Massachusetts in 1860 in the case of the *Commonwealth vs. Flannelly* was the first to be handed down in the United States

concerning milk. This case did not invalidate the law of 1856, but the court held that knowledge of adulteration by the seller must be shown in order to prosecute him, and since it was not shown, he was not guilty. This decision was reversed four years later in which case the Commonwealth was the plaintiff. The court upheld the conviction of a milk dealer for adulteration of his milk regardless of his knowledge or ignorance of the adulteration. James A. Tobey in his book, "Legal Aspects of Milk Control," lists 258 court decisions up to 1936, the majority of them dealing with the sanitary aspects of milk control.

Some of the more recent legislation and court decisions are interesting in that they indicate the socialized trend being followed by legislators and the courts. These decisions stress the welfare of the public over that of the individual. The first case directly involving milk control to come up before the United States Supreme Court was that of *Fisher vs. St. Louis* in 1904. The issue was whether a municipal ordinance requiring permits for the establishment of dairies in the city was or was not in contravention of the Fourteenth Amendment of the Federal Constitution. Fisher, a dairyman, contended that he had been denied due process of law and the equal protection of the laws as guaranteed to him by this amendment. The Supreme Court of Missouri upheld his conviction and the case was then appealed to the highest court of the land, which affirmed this decision. Other Supreme Court cases came up in 1905 and 1907 relating to sanitary control over milk. The city of Milwaukee in 1913 was allowed to confiscate milk that came from outside sources and milk from cows not tuberculin tested.

Between 1914 and 1934, courts in ten states sustained the validity of laws, ordinances, and regulations requiring the pasteurization of all or part of the market milk supply in accordance with methods approved by health authorities. (25) In only one case has there been an adverse decision rendered on state or municipal pasteurization rules. This case came up in Missouri (*State vs. Kinsey, 1926*), in which it was held from the evidence submitted that raw milk is better than pasteurized milk. Late in 1935 a municipal ordinance in Santa Rosa, California, prohibited the sale of pasteurized milk within the city unless it had been pasteurized within the city limits. This action was upheld as a valid exercise of the police power by a district court of appeal in California (*LaFranchi vs. City of Santa Rosa*).

As a result of other recent cases, dairymen must submit their cattle to tuberculin testing in the interests of public welfare; a milk dealer is held liable for a case of undulant fever caused by his milk supply in that there is an implied warranty of the wholesomeness of a food sold by a dealer for immediate domestic use; a city may prohibit milk from within its limits only

on the ground that it is dangerous to health and not merely on the indefensible ground of distance; and cities may license dairies and pasteurizing plants and charge license fees. A highly significant decision was handed down by the New Jersey Supreme Court in 1935 in the case of *Sheffield Farms vs. Seaman* regarding the rights of milk dealers in obtaining licenses and the limitation of the powers of a health department. In this case the health authorities of the city of Perth Amboy had refused to grant a permit to a qualified dealer to sell milk merely for the alleged reasons that there was already an adequate supply of milk in the city, and that the health department did not wish the added burden and expense of further regulation and control of milk. (25) The court dismissed the case in that the control by the health authorities was arbitrary and inequitable.

These same powers used by the health authorities in the foregoing case are used by many states for the purpose of restricting the milk market to home producers. The most striking examples of sanitary regulations being used as trade barriers between states can be found by studying the milkshed problems of several of the New England and Atlantic Coast states. (21) An illuminating situation of this type of market restriction is presented by Thurman Arnold of the antitrust division of the Department of Justice in his report on the Chicago milk case. (1) Indictments have been issued against many farmers, officials, and laborers within the Chicago milk market. The case is still pending. Mr. Arnold writes,

“There (Chicago) we found a combination of farmers, large dairy companies, a labor union, and members of the Board of Health, was forcing upon the poor a luxury system of distribution. This system consisted in leaving quart bottles at their doorsteps. It was enforced by boycotting distribution of milk by stores. The system was also used to create a milkshed around Chicago shaped like a sausage. Farmers two hundred miles away, who were within this privately-controlled milkshed, could get their milk into Chicago. Farmers who were much closer to Chicago were unable to sell their milk in the city limits. The indictment charged that this trade barrier was maintained by the use of an inspection law by the Board of Health. Farmers who were not in the favored group found it impossible to get their farms inspected.”

Such instances as illustrated are examples of how states and municipalities can disguise a health measure into a plan to discriminate economically against certain groups. Sanitary regulations are the principal legal weapons used by municipalities to control the supply of milk by raising the requirements, if thought necessary. The multitude of contravening state, municipal, and county sanitary and inspection requirements for milk, especially in the larger milksheds, has created additional problems for the dairyman caught in this strangling network of regulations. Perhaps the individual laws are not intentionally designed to control supply, but in his compliance with all

the requirements a dairyman may eventually be forced out of business because the income from his sales will not cover his cost of production. An illustration of this can be found in the report of the Federal Trade Commission on the Connecticut and Philadelphia milksheds. (28) One distributor who shipped milk to several cities and states claimed to be subjected to 57 different inspections, and many farmers complained of similar experiences. Although these may be extreme cases, nevertheless they do indicate the need for a uniform milk ordinance for states and cities.

The great majority of the members in the dairy industry are without doubt in favor of a uniform milk ordinance. It has been suggested by many of the leaders in the industry that the United States Public Health Service ordinance be adopted in all the states and cities. In a recent survey it was found that of 2,651 cities reporting, 36 per cent had a milk ordinance and one-fourth of these were using the Public Health Service Ordinance. (12) These cities were located within thirty-two states.

Even though sanitation controls have been used indiscriminately in many instances, it is doubtful whether the public would tolerate lessening the sanitary regulations over the dairy industry. It is an interesting fact that even with supposedly stringent sanitation controls there was an annual average of 1,625 cases of milk-borne diseases in this country from 1924 to 1934. (24) Of this number, a yearly average of forty-three deaths resulted, which should be good and sufficient reason for continued vigilance over milk sanitation by health officials and producers.

### **ECONOMIC MALADJUSTMENT: FORERUNNER TO ECONOMIC REGULATIONS**

In each of the state statutes sanitary regulations of milk are justified on the grounds that milk is the most valuable food of man and thus directly affects public welfare. Economic regulations through price controls are justified on the grounds that certain groups have a vested interest in the milk industry and as such deserve to receive a just and reasonable share of the consumer's dollar in equitable proportion to their costs. Public welfare, through stabilization of the milk industry, is considered to a lesser extent. Prior to the crisis of 1929, the milk industry enjoyed the "let-alone" philosophy with the belief that unlimited freedom of competition as it then functioned in business and industry would create efficiency of operation, eliminate wasteful business practices, and best serve the public welfare. The several groups in the industry appeared to be working harmoniously, although an analysis of eastern milk markets by Cassels indicates that the monopoly ele-

ment in producer prices between 1920 and 1929 in the larger eastern milk-sheds was well established. This monopoly price arose partly from the restrictions associated with city health inspection and partly from the bargaining power of cooperative organizations of fluid milk producers. (4) Although occasional disagreements arose, strikes and violence were rare.

The depression following the crisis of 1929 produced a discouraging picture of economic maladjustment in industry and agriculture. The general economic conditions at the time, especially as they affected agriculture, were more instrumental than were conditions peculiar to the fluid milk business in bringing on the chaos that followed. Prices paid producers for milk going into the cities reached a depressing low in 1932 and 1933, but this drop was preceded by an even more precipitous fall in other farm prices, especially manufactured dairy products—butter, cheese, and evaporated milk. In fact, this latter condition was largely responsible for the conditions in the fluid milk market. As a result of this disparity between the prices received for milk going into manufactured dairy products and for that used for fluid consumption, a great number of producer-distributors who formerly sold their milk for manufacturing purposes appeared in the markets almost overnight. In order to get business, these new distributors cut prices below those that normally prevailed. Many consumers whose incomes had been reduced responded to price reductions with the result that "price-cutting" had a demoralizing effect on the whole market. In the attempt to hold their trade, the old distributors answered by meeting the price cuts and passing all or part of the reduction back to the producers. Disturbances followed, which in some cases led to farmer strikes and, as Mr. Mortenson states, "a method of picketing which could not be characterized as 'peaceful'." (16)

With the fluid milk market in turmoil and many people forced out of their businesses, the starting of a small milk distributing company appealed to some as a means of making a living. The returns were fairly satisfactory because many distributors found they could pass the burden of their uneconomic competitive practices, or a large part of it, on to producers. With the lack of alternative economic opportunities for capital and labor an overexpansion of distribution facilities resulted. These overexpanded distribution facilities still have to be maintained in many of our markets today. (6)

Consumption declined perceptibly during the depression. This was another economic factor that had a direct effect on the price that producers received for their milk. The United States per capita consumption of milk reached a high in 1929 of 163.2 quarts and dropped severely to a low of 144.4 quarts in 1934. (15) The per capita milk and cream consumption has



barely held its own in the past 10 years in our cities and towns, and in some markets it has decreased noticeably. (16) Dr. Tinley, in his report on milk marketing in California, states, "It is significant that per capita consumption continued to decline in the face of this very material decline in the prices at which consumers purchased milk. This strengthens the argument that the prevailing level of buying power is the most important single factor influencing the level of per capita consumption of milk over a period of time." (23) There are other factors besides the level of buying power that influence consumption such as the buying habits of people and the competition from other products, especially canned milk (6), and the fact that butterfat can be obtained more cheaply in the form of butter than in the form of milk.

Another factor influencing consumption of fluid milk is the age structure of our population. Dairymen are aware that our population is changing, that we have a greater percentage of older people and a smaller percentage of younger people than we had in the past. According to Dr. O. E. Baker of the U. S. Department of Agriculture,

"The 1940 census will show about 11% fewer children under ten years of age in the nation than were reported in 1930."

\* \* \*

"... the decline in children has already reduced materially the market for milk below what it would have been had former trends persisted." (8)

With the dairy farmer's income at a lower level than that reached during the agricultural depression period of 1922, the dairy farmer during the depression period tried to maintain his predepression income by adding more dairy cows to his herd, hoping to retrieve his total net income by producing a larger quantity of milk for sale at lower unit prices. This increased production aggravated still further the depressed milk market. Price-cutting, misrepresentation of product, bribery, and special inducements were not uncommon. A significant change was also taking place at the time in the methods of distribution. A marked shift from home delivery of milk to sales through stores occurred in the larger markets with the idea of moving off the surplus milk at a lower price permitted by a cheaper method of distribution. In order to develop or to maintain sales to stores, distributors gradually lowered their list prices and hence their margins to stores, and also granted quantity discounts and secret rebates below the list prices. (23)

There were other reasons why production increased. The dairyman found that he could get the best price for his feed by marketing it as fluid milk, because the prices on dairy products, especially fluid milk prices, did not drop as severely as prices on other agricultural commodities. Increased production because of low feed values was taking place even in the 1920 to 1929 period.

With the dairy farmer trying to regain his income by increasing production, he was faced with the problem of maintaining sanitation requirements, which were increasing his costs of production. It is estimated that those producers required to operate under the United States Public Health Service Ordinance have had their cost of production increased from \$200 to \$800 by complying with the requirements. (14) There was considerable opposition in the Chicago milkshed during 1941 to the Chicago City Council's proposal to levy an assessment on dairy farmers of about  $1\frac{1}{4}$  cents per hundred pounds of milk to pay for inspection of their farms under direction of the Chicago Health Department. It is estimated that it would cost the average farmer \$15 a year; some farmers would pay more than \$100. (9)

It can be seen from the foregoing discussion of the economic maladjustments that accrued in the milk industry during the depths of the depression and the ensuing adjustment period that the producers were the members of the industry who were hit the hardest with increasing costs on the one hand and depressing prices on the other. In many markets the distributors managed to maintain their spreads during the whole depression period; if they were required to cut prices in order to meet competition, they deducted their costs from the lowered returns and passed the rest on to the producers. The rigidity and amount of distributor spreads has resulted in recent probes into many of the larger markets by the Federal Trade Commission and antitrust division of the Justice Department.

The consumers fared badly in most of the larger markets. Some felt that they benefited through the price-cutting period in that they could get their milk cheaper, but in many instances they found that milk was not delivered regularly as the result of strikes and those who most needed the milk could not get it at double the price.

Although there were producer-cooperative bargaining associations in most milk markets, they were unable to resist the price declines. In the markets where they were strongest the producer associations tried to bring about a conciliatory settlement with the distributors by getting the distributors to agree that they would pay certain set prices for the several classes of milk. These "shotgun" agreements were only temporary because of the absence of complete cooperation within the industry.

### ERA OF ECONOMIC REGULATION

In the depression years of 1932 and 1933, conditions had come to such a state that producers were fighting producers but mostly distributors, while distributors were arrayed against distributors as well as producers. A condi-

tion of universal distrust prevailed in most markets among the several elements of the fluid milk industry. Finally, with the situation completely out of hand, producers and the large distributors sought governmental assistance to aid in stabilizing the markets. Producers were especially desperate in asking for aid—their margins between costs and sales were very meager and in many cases they were fortunate to have a favorable margin. It was during this period that price fixing at higher price levels became a popular cry for both industry and agriculture. The urge that the government act and act quickly became more general and more widespread. The State and Federal Governments began considering various proposals to bring about reform in the milk markets.

Considerable rivalry exists among a few of the states as to which state was the first to act with its police power to protect the public welfare by attempting to bring about a reconciliation of the elements in the milk markets and especially alleviating the pressure on the producer by stabilizing producer prices at higher levels. According to Tinley, "The Director of Agriculture acting under the terms of the provisions of the State Market Commission Act of 1916, agreed in January, 1932, upon request of producers and distributors in the San Francisco market to assist in stabilizing producer and resale prices in that market. The Los Angeles milk market petitioned the Governor in August, 1932, to interfere in the chaotic market situation. The board set a price to producers and endeavored to maintain resale prices by negotiation. This arrangement was continued until supplanted by the Federal Agreement in 1933." (23) Wisconsin promulgated an order on the Milwaukee market effective December 1, 1932, under provisions in their statute prohibiting unfair methods of competition. (7) In this same year the Pitcher Committee was appointed in New York to study the milk problem and recommend legislation. (2) These three states were no doubt the first ones to start the movement of state milk control legislation. Other states were considering measures at this time, but many of them did not get into action until the following year and later. Altogether twenty-six states have passed milk control legislation. Only nineteen acts are in effect at present.

The Federal Government entered the field of regulating the dairy industry about the same time that the states were promulgating the original milk control laws. The passage of the Agricultural Adjustment Act in May, 1933, gave the Secretary of Agriculture power to enter into marketing agreements with producers and distributors of farm products engaged in handling, in interstate or foreign commerce, any agricultural commodity or product thereof, including dairy products. At one time there were 52 marketing

agreements or orders in effect, but at present only 27 markets are being regulated. The state and Federal legislation that was passed during the 1930's was designed to stabilize and protect the dairy industry; actually, however, the fluid milk branch of the industry received the major benefits from such control. The Agricultural Adjustment Act specifically stated that it was the objective of the law to bring the farmers' incomes back to parity, using the 1909-1914 period as the base period. Handlers or distributors were not given a great deal of attention.

Figure 1 indicates the states in which milk control laws are in effect at the present time and those states where the laws have been declared unconstitutional or allowed to terminate. The figure also shows the marketing areas in which Federal agreements or orders are now in effect. In several of the states where milk control laws are in operation, Federal marketing agreements or orders are also in effect. The Federal regulations are found in the large cities where the milkshed extends into several states or in the medium sized cities that are located near state borders and are naturally supplied with milk from the neighboring states. In these cases the Federal Government has usually been called in by the producers in the milk industry and state officials to enforce an agreement or order in a particular market, because of the large quantity of milk that enters that market in interstate commerce.

The majority of the states that have milk control laws in effect at present have made provisions in their laws for cooperation of the state agency with other authorized agencies and with the Federal authorities for the purpose of effectuating uniform milk control. Only Wisconsin, Louisiana, and Maine have omitted such provisions from within their laws; Louisiana, however, has carried out the spirit of cooperation by enacting like orders, complementary to those that have been placed in effect by Federal authorities in the New Orleans and Shreveport markets. In practically every case where state milk control laws and the Federal regulations are likely to conflict an arrangement has been reached whereby the state enacts an order complementary to the Federal order. Similar action has taken place in the Fort Wayne and La Porte markets in Indiana, in the Lowell-Lawrence market in Massachusetts, and in the New York City market. The state order is necessary to regulate the production and distribution of intrastate milk. In the case of *Baldwin vs. Seelig* (1935), 294, U. S. 511, the United States Supreme Court established the limits on the commerce that the individual states and the Federal Government can respectively regulate. The court held that New York authorities could not prohibit the sale of milk in the state of New York that was bought at a lower price from out-of-state producers than that required to be paid to producers within the state of New York.

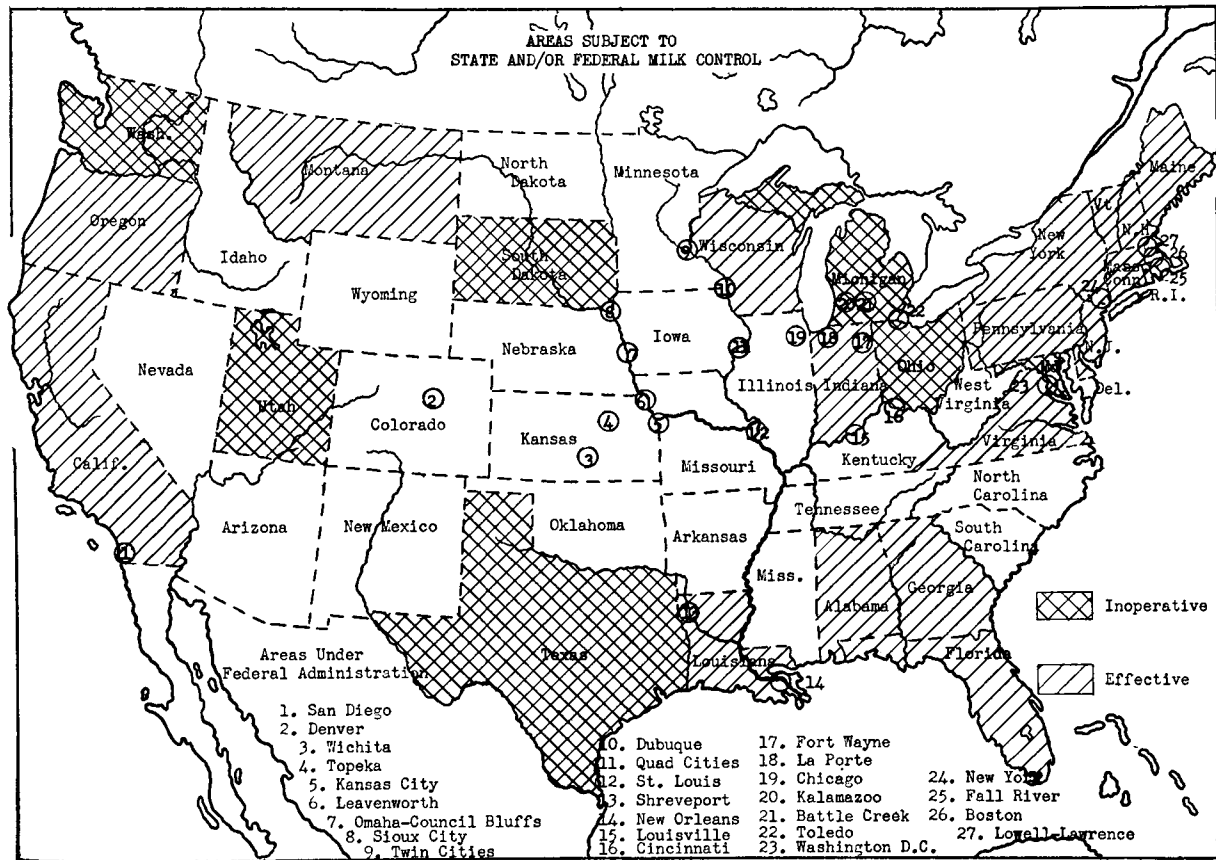


Figure 1.

In addition to the cooperation provision in most of the state milk control laws a protective provision is also included whereby the state will extend the regulation of milk marketing to the extent allowed by the constitution of the state and the United States. All states have this savings clause within their law except California, Connecticut, Georgia, Louisiana, Maine, Oregon, and Wisconsin.

With approximately 8 years of experience in regulating the fluid milk industry through price maintenance by the states, an analysis of the milk control acts of the states will give a better insight as to how these agencies have attempted to correct the evils discussed. The majority of the laws have been amended a number of times in order to correct certain practices that have arisen since the passage of the original act or that were overlooked at the beginning. In many cases much of the original legislation has been completely overhauled and much of it discarded.

The following analysis of the state regulations should be helpful to many individuals and regulatory groups that are interested in improving existing laws.

## **ANALYSIS OF THE STATE MILK CONTROL ACTS\***

### **DEVELOPMENT OF STATE MILK CONTROL LAWS**

Milk control laws were effective as of May 1, 1941, in Alabama, California, Connecticut, Florida, Georgia, Indiana, Louisiana, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin.

The state legislators' justification for state milk control laws is almost identical in each instance. One state may stress demoralizing trade practices, another public health and welfare, or the dangerous condition of the credit structure of the state. On close scrutiny and analysis it is evident that the major objective of each of the laws was to give the producer of milk a larger share of the consumer's dollar; it is not difficult to see, therefore, that the producers were the driving force behind all the state laws.

The New York law was one of the early laws to be passed, and it has been the basis of the majority of other state laws that are now in effect. The legislative findings and statement of policy of the New York law declared that its purposes were to protect the public health and public welfare. This protection was to be accomplished by means of state regulation of the economic activities of the producers and dealers.

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\* Material for this section has been obtained almost entirely from papers 1 through 14, Series on State Milk Control Acts, Dairy Section, Agricultural Adjustment Administration, United States Department of Agriculture.

In 1934, Pennsylvania, Massachusetts, Rhode Island, and Virginia enacted milk control legislation. In the meantime, Texas and Utah (2) had made some effort to set up local control agencies in cities under enabling statutes; and West Virginia had made use of general powers of its Department of Agriculture to create a "State Milk Board" in May, 1934. In the meantime, also, the governors of three states, Illinois, Louisiana, and Michigan, had vetoed milk control bills. Bills had also been introduced into the legislatures of Delaware and South Carolina. Legislative proposals had been prepared by groups in Kentucky, New Hampshire, and Colorado. By 1935, bills had been introduced or at least promoted in two-thirds of the remaining states, with the following enacting the bills into law: Alabama, California, Indiana, Maine, Maryland, Montana, New Hampshire, South Dakota, and Vermont. Since that time the South Dakota law has become inoperative, and the Maryland law was declared invalid. Legislatures rejected bills in the following states: Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Michigan, Minnesota, Nebraska, and Tennessee. Of this group Georgia enacted a law in the 1937 legislature that is still in effect, and Michigan finally managed to pass a milk control law in the 1939 legislature. This law was recently declared unconstitutional in the Supreme Court of Michigan (*Milk Board vs. Johnson*) on the grounds that the Board was granted rate-making power, which is an act that is legislative and not judicial in kind. Louisiana established a milk commission during the 1938 session of the legislature.

The State of Washington designed a law in 1934 almost identical to the AAA of the Federal Government, declaring milk and seven other commodities as "basic." The law has been declared invalid.

All of the early laws, except those enacted in Connecticut and California, were so-called "emergency" measures designed to cure the acute pains that were occurring in the milk markets at that time. The majority of the states drafted the legislation for a period of 2 years with the hope that the existing economic emergency would be no longer in existence and the milk industry could cure its own ills thereafter. Provisions were made that the acts would expire at the end of the 2-year period, but only one act (Ohio) has been allowed to terminate since its enactment. Only five states designed their milk control legislation on a permanent basis from the beginning. Those states are California, Connecticut, Louisiana, Maine, and Oregon. On the other hand, only five states remain—Georgia, Indiana, Massachusetts, New Jersey, and Wisconsin—that do not have permanent laws at present. The laws of these states all expire this year (1941), but it is quite probable that the present acts will be extended for another 2-year period or perhaps be

made into a permanent law. The Wisconsin Department of Agriculture can discontinue the enforcement of the law whenever it determines that economic conditions of the industry no longer interfere with production, distribution, and consumption of milk so as to constitute a threat to public health and welfare.

Those states that had passed the Milk Control Act as a temporary measure to be in effect only for a year or two found at the end of the designated time that the law, because of its imperfections and the huge task assigned to the administrative body, had not accomplished the desired results. Disparity of prices between milk and other commodities was not as great as before, but should the legislators allow the law to be discarded the producer had no guarantee that his welfare would be safeguarded by other members of the industry. From the experiences that occurred in certain markets when regulation ceased, the lawmakers felt that the laws had to be extended or be made permanent in order to protect the public welfare and prevent the recurrence of conditions as they existed in the milk markets during the depths of the depression.

The following excerpt from the 1939 amendment to the Florida law, which as a result became a permanent act, is an illustration of what the majority of legislators feared would happen if controls were removed:

“Such practices (destructive and unfair manipulation of prices) were and are curtailed by the existence of said board, but will immediately recur should said board and the regulation set up to be administered thereby pass out of existence . . . that the danger to the public health and welfare is immediate and impending, the necessity urgent and such as will not admit of interruption in public supervision and control . . .”

#### PRODUCT TO BE CONTROLLED

Each state defines the product or products it intends to control. California, Connecticut, Montana, Maine, and Oregon define milk as fluid milk and cream for human consumption. Louisiana uses the same qualifications but adds several limitations in the way of sanitary requirements, such as adulteration, milk from diseased cows, unsanitary handling, etc. Alabama, Vermont, Virginia, and Wisconsin make provisions for regulation of buttermilk and skimmed milk in addition to fluid milk and cream. Massachusetts, New Hampshire, and Rhode Island use fluid milk, cream, skim milk or buttermilk, fresh, sour, or stored, irrespective of whether flavored or not. Florida, Georgia, Indiana, New York, and Pennsylvania extend their restriction further by adding ice cream mix, condensed or concentrated whole or skim milk except in hermetically sealed cans or containers. Indiana and New York are the only states extending their control over the manufacture of butter.



**ADMINISTRATIVE ORGANIZATION OF CONTROL AGENCIES**

Fourteen of the agencies have some connection with the state departments of agriculture, either by being within the department of agriculture, having the commissioner or director of agriculture a member of the agency, or receiving assistance from the department in carrying out the provisions of the act. (Table 2, Appendix.) Each state, California, Massachusetts, New York, and Wisconsin has its control agency within the Department of Agriculture under the direction of the Commissioner or Director of Agriculture. Florida, Indiana, Louisiana, and Vermont provide that the Commissioner of Agriculture shall be a member of the control agency. Montana makes provision for the executive officer of the Montana Livestock Sanitary Board to be a member of the control board, whereas Oregon fits into this category by requiring that the Director of Agriculture or his representative be the executive secretary of the board. Maine, Rhode Island, and Virginia make provisions for technical services to be obtained from their respective agricultural departments. In the recent amendment to the Georgia Act, the milk control board was removed from within the Department of Agriculture and established as an independent agency. The same action occurred in the state of Rhode Island since the original act was passed, but the Director of the Department of Agriculture and Conservation is a member of the Milk Control Board.

Alabama, Connecticut, New Hampshire, New Jersey, and Pennsylvania have no connections between their milk control agencies and state agricultural departments.

**Membership.** Connecticut provides for an administrator aided by two deputies. Seven states have a control agency consisting of three members; one state has four members and the other four states have a membership of five in their agencies. In the states of California and New York the Director of the Division of Milk Control is selected by the Commissioner of Agriculture and Markets. The Wisconsin Director of Agriculture is also the head of the milk control division. In all other states the members on the agency are appointed by the governor, usually for a period of from 2 to 4 years, and removable at his discretion. The membership of the control division in a few of the states consists of other state officials holding another office.

Oregon has the most unique limitations with respect to membership of any state. They specify that none of the three members shall be in any way connected with the dairy industry and there shall be one member appointed from each congressional district. Although called a board, Oregon's control agency is a true commission type of regulatory agency. Theoretically it rep-

resents the public point of view entirely and has no representatives of private interest groups in its fold. Eleven states call their control agency a board, four a commission, and one a milk administration. The other three states' agencies are within the Division of Agriculture and Markets. Pennsylvania requires that its three members be citizens and voters within the state, as does Massachusetts. Connecticut provides that its administrator shall have been a producer 2 years prior to receiving his position. Florida and Virginia specify that one of the members shall be in no way connected with the milk business. Vermont requires the appointment biennially of a citizen; New Hampshire states that no more than two of its three members shall be from the same political party. Alabama, Georgia, Montana, New Jersey, and Rhode Island require that one member be a consumer. Ten states require producers to be on the board, with Georgia, Louisiana, and Indiana requiring two. Eight states require distributors to be represented, with Indiana requiring two. Only six states specify that producer-distributors be included; Georgia requires two, one to be from a cooperative and one a store licensee.

**Compensation.** Thirteen of the states provide that the appointed members of their control agencies receive a per diem varying from \$5 in Montana and California (for members of the local control boards), to \$15 in Rhode Island and Indiana. The majority of the states pay a per diem of \$10 and traveling expenses for every day on duty. Oregon limits the total monthly per diem pay each member can receive to \$150. In Maine the Governor determines the per diem, and in Virginia the Governor determines the pay of its commission members. Florida does not pay its members but allows them traveling expenses and limits the director's salary to \$3,600 yearly. Pennsylvania is the only state that pays a yearly salary to its members—the chairman receives \$6,500 and the others \$6,000, but no member can hold another position. The persons working on milk control in New York, California, and Wisconsin receive regular salaries as members of their respective state departments of agriculture.

**Local milk boards.** A few of the states provide for local committees to function within designated market areas to aid the milk control agency in enforcing the orders and regulations issued. These committees are probably more helpful at the beginning in helping the control agency establish equitable producer prices, and resale and wholesale prices where used. If satisfactory prices and trade regulations are established at first, the subsequent job of enforcement is greatly reduced. California has probably the most advanced provisions for local committees; in fact, it gives the Director of Agriculture and Markets the power to establish two local committees within one market-

ing area. One committee of seven is to be composed strictly of producers and the other local board is to have seven members, but membership is divided, with three distributors, one producer-distributor, one consumer, and two retail storekeepers being represented. Evidently one board is to aid the Director in establishing equitable producer prices, and the other to make sure that fair resale and wholesale prices are scheduled. Alabama has no provision for local boards, but in several of their markets such boards are functioning. The Montana board may foster in each market area a local board composed of all licensees to aid the board in various matters; provisions are made that the local board may receive for its expenses up to 10 per cent of all fees collected. Indiana also gives the state board power to set up local control committees but specifies that the membership shall be selected from the producers and distributors serving the particular market. The New York law allows the Division of Agriculture and Markets to select an advisory committee of from 11 to 15 members for a particular market, at least 5 of the members being either producers or distributors. Virginia is also making use of local committees composed of 5 members that are subordinate to the regular state milk commission. Two are producers, two represent distributors, and the chairman is a consumer representative.

**Source of financing.** State milk control agencies are financed by four methods. In some cases only one method of financing is used while in others various combinations of the four may be employed. The methods are: (1) licensing dealers and in some states producers, stores, and others; (2) direct appropriations from the state treasury; (3) collection of assessment fees imposed upon the members of the industry; and (4) the monies collected as fines against violators.

The most common system is that of licensing dealers. This method is used for a twofold purpose in most states; that is, for financing and as a means of enforcing the several provisions of the regulations or orders relating to the marketing of market milk. Some states levy special assessments in addition to license fees to cover the cost of services performed by the state agency for members of the industry.

Besides the license fees and other fees charged dealers, producers, producer-distributors, and peddlers, Florida requires that all solicitors, route salesmen, and milk truck drivers pay a license fee of \$1 yearly. New Jersey has a provision that upon applying for a license any dealer or processor must deposit \$100 with the Board until the regular fee is determined. In addition to the fees required, Montana also requires that all producer-distributors and distributors handling sweet cream pay an extra \$1 a year license fee. In

Virginia producers and stores selling milk for consumption off the premises are considered distributors and must pay the required assessment fee of not more than 4 cents per 100 pounds of milk handled though no specific mention is made on the matter.

Louisiana is the only state that meets the entire expenses of the state milk commission by direct appropriations from the general fund of the state (\$25,000 per annum). Other states are appropriating money to cover the balance not received from fee collections. New York appropriated \$220,000 in 1937 for the expenses of the milk control work. Five states provide in their laws that expenses shall not exceed revenues of their respective control agencies.

Three state milk control laws specify that all monies collected from penalties as fines shall be used to help defray expenses of their agencies.

### POWERS OF THE CONTROL AGENCY

Table 2, Appendix, lists the general powers of the control agency which are usually the powers to supervise and regulate the milk industry and the methods by which marketing areas are established within the individual states. Table 1, Appendix, outlines the more specific powers relative to investigations, licensing, bonding, regulation of unfair trade practices, mediation, and the limitations and exceptions of these particular powers.

**General powers.** An illustration of the general powers given a control agency to regulate and supervise the milk industry is this excerpt from the Montana act: "The Board is hereby vested with the powers, and it shall be its duty to supervise, regulate, and control the fluid milk industry of the State of Montana, including the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana for consumption within the State . . ." The majority of states have similarly worded powers given their control agencies.

**Designation of marketing areas.** The manner in which market areas are established or designated in the several states depends on the powers granted the control agencies by the legislators. A natural marketing area is necessary in order to obtain uniformity in prices and practices, but in many states these powers have been used to restrict supplies of milk from a market where the problem of surplus milk causes the greatest difficulties. In each of the nineteen states the control agency may take the initiative in setting up or establishing the particular marketing area. Three of the states make no specific mention as to how marketing areas are to be set up but state in the

act that the agency may adopt, promulgate, and enforce all rules and orders necessary to carry out the provisions of the act. Six states give their control agencies the power to act on their own initiative and own motion in carrying out the provisions of the acts, which include designating marketing areas without requiring a petition from members in the market or a majority approval. These states have permission to promulgate their rules and regulations anywhere in the state.

Marketing areas are not set up in most states until after public notice and a public hearing is held in the area. If the members of the industry were not in favor of such a proposal and the marketing area were established without their consent, the enforcement problem would be difficult. Recent amendments have eliminated the "consent" feature from the New Hampshire and Vermont laws—i.e., that the agency cannot operate within a particular market without first being petitioned by a certain percentage of volume or number of members in the market. Wisconsin specifies that the Department of Agriculture and Markets on its own initiative or on written petition may act by establishing "regulated" milk markets and prescribing such terms and conditions as will tend to eliminate any unfair methods of competition or unfair trade practices that may exist in the particular market. Two states, Indiana and Massachusetts, may act on their own initiative in designating market areas and may prescribe provisions of the order except the conditions of the sale of milk in wholesale or retail channels. In Indiana wholesale and retail prices are set only when an "emergency" is declared to exist in the market and the action is requested by distributors and producer-distributors. In Massachusetts resale prices cannot be established unless petitioned by 25 per cent of the producers within the market, and once the prices are established the board may keep or withdraw the prices without petition. Rhode Island has a somewhat similar provision in its law, except that in setting minimum prices to producers a request by 51 per cent of the producers in the market must be made and the same percentage may terminate such an action. The Florida act states that the Board is required to withdraw from a market upon petition of 51 per cent by volume and number of producers in the market.

Alabama, California, Montana, and Virginia provide that before regulations are in effect in the particular market a certain percentage of those affected must give their approval. California provides that the marketing plan for fluid milk or cream shall be formulated by the Director of Agriculture and Markets and then after public notice and hearings 65 per cent or more of producers by number and volume must approve before the plan is in force. Only 55 per cent of the producers are needed to terminate the agree-

ment, and the Director may terminate the agreement after notice and a public hearing. Alabama has somewhat similar provisions but allows producer-distributors and distributors as well as producers (all counted as one group) to present a majority request for the board to exercise its powers in that market. A limitation is placed on the members by requiring them to be operating under a permit from the State Board of Health or the County Board of Health. Once the board has established itself in a market it cannot be forced to vacate but may do so on its own initiative.

Georgia has a somewhat different regulation relative to designation of milksheds. After the board designates a milkshed, an election has to be held to determine whether the rules promulgated by the board are to be effective. Each producer, producer-distributor, and distributor having a permit from the municipality or county allowing him to sell milk in that particular market has one vote. Virginia has similar provisions in its law as to when its commission's orders are effective (as do many other states) but specifies certain persons or groups that can institute hearings. A hearing is required to precede any exercise of power in any market and also the withdrawal of the Commission once regulations have been in effect. Hearings may be called by the milk commission, a producers' association, or producers if no association exists, and by distributors if those requesting a hearing distribute the major part of the milk consumed in the market. The commission must withdraw upon the majority petition of producers and distributors as to volume and acting jointly.

The right of state control agencies to establish rules and regulations within a marketing area in order to effectuate the purpose of the act has been challenged in a number of courts on the ground that an undue delegation of legislative powers, which do not legally belong to them, has been conferred upon the agencies, but in almost every case the courts have upheld the control laws.

A recent case (February 7, 1940) decided in the State Supreme Court of Louisiana declared unconstitutional the section in the Louisiana law that empowered the commission to make all necessary rules and regulations for carrying out the provisions of the act and to attach penalties for failure to heed the rules and regulations promulgated.

**Investigational powers.** All the state control agencies (or their representatives in some states) have the power to investigate all matters pertaining to production, distribution, manufacture, storage, and sale of milk within their state. Rhode Island and New Jersey also add importation as a process needing investigation. This power, especially in regard to investigation of

manufacturing, appears to be somewhat questionable with respect to those states that limit the product to be controlled to milk and cream. The power of investigation and regulation in most states is supported by the power to (1) subpoena books, persons, records, etc., relative to the milk industry; (2) enter into places where milk is received, handled, bottled, etc. (nine states limit the entry to these places with the provision, "at all reasonable hours"); (3) administer oaths; (4) inspect books, accounts, papers, records, etc.; and (5) hold public hearings.

More than half of the states require that all information obtained by the agency or its duly authorized representatives shall be kept confidential except as may be necessary in court or market hearings. Alabama, Florida, and Montana even go so far as to make the unwarranted divulgence of confidential material by a member of the agency or its representative an offense subject to fine and/or imprisonment. The Oregon law makes provision for the Milk Control Board to conduct investigations concurrently with the Oregon State College. Virginia provides for assistance to the commission from the Virginia Agricultural Experiment Station and Extension Service.

The majority of states require persons to answer subpoenas. The failure to do so may result in a fine, jail sentence, or attachment proceedings as the law may specify. In connection with the power to administer oaths and subpoena persons, the Oregon, Virginia, and Florida laws give the agency the power to take deposition of witnesses within or without the state.

The marketing orders for establishing marketing areas within the several states specify the type of information required by the control agency from the records and reports of the licensees. In a few of the states other members of the milk industry as well as licensees are required to submit such records and reports as the agency may desire. The failure to keep and submit such required reports and records has resulted in a great number of court cases, but in almost every case the control agency has forced the violator to perform such duties.

**Licensing powers.** Licensing powers have been granted to control agencies for financing the cost of administration and to give to the control agency a method of enforcing the regulations and orders promulgated for the various markets. The enforcement procedure is to deny, suspend, or even revoke licenses for violation of the rules of the control agency.

Before proceeding to list the various violations that are sufficient grounds for denial, suspension, or revocation of a license as set forth by the several state laws, it might be well to analyze the definitions of "milk dealer or distributor" used by these states. In each state the milk dealer or distributor is required to be licensed, but the definition of a milk dealer varies markedly

among the 19 states having milk control laws. The majority has a simple definition of a milk dealer, varying perhaps only in wording. This definition limits the milk dealer to any person or firm that purchases or handles milk for sale in fluid milk channels within the state. Connecticut, Florida, Maine, Montana, Oregon, Rhode Island, Virginia, and Wisconsin follow this definition closely. Wisconsin adds the phrase "buying for resale either personally or through an agent or as an agent of another." Montana and Virginia include resale; whether the milk is sold on or off the premises the person is still a dealer. Connecticut, however, makes an exemption of those selling milk for consumption off the premises. Virginia adds producer-distributors and stores as dealers. Several of the states specify that any producer who sells milk to a milk dealer only shall not be deemed to be a milk dealer.

The New York and California definitions of a milk dealer are broad. They include brokers, agents, and cooperative associations, whether incorporated or not, who handle fluid milk for sale. California includes as dealers or distributors producers or associations of producers and stores if they engage in processing or bottling fluid milk or if they sell milk for consumption on the premises. New York exempts dealers within the smaller communities at its discretion and eliminates stores that do not deliver milk to consumers by vehicle.

Vermont and New Hampshire have their concept of a milk dealer patterned almost alike. The definition reads, "Any person who produces and sells or who purchases for sale or sells milk daily within the state for consumption, disposition or use within the state, except consumption on the premises." A producer who delivers or sells milk to a distributor is not deemed a distributor. New Hampshire limits the definition to any person delivering more than 2 quarts per day. From the wording of the definition it can be assumed that the law specifies that daily deliveries be made or the distributors shall be subject to penalty.

A somewhat different definition is in effect in the states of Pennsylvania, New Jersey, and Massachusetts. The definition reads somewhat as follows: "Any person who purchases or handles milk within the state for sale, shipment, storage, processing, or manufacturing within or without the state." Massachusetts replaces some of the foregoing words with "bottler," "processor," and "pasteurizer." Pennsylvania includes stores, and New Jersey adds distributing brokers and persons who produce for sale directly to consumers, except for consumption on the premises. Under its licensing powers, Rhode Island specifies that no foreign corporation shall be granted a license unless it has conformed to all other laws of the state.



Mandatory licensing is required in every state for all members of the milk industry that fall within the definition of a milk dealer. The Alabama licensing provisions are mandatory only in the marketing areas where the provisions of the law have been applied. New Hampshire and Vermont limit mandatory licensing to the areas in which the control agency is operating. Oregon gives the Board discretion to license dealers in population centers of 15,000 or under. Pennsylvania may exclude dealers from the licensing provisions if the said dealer handles less than 1,500 pounds of milk per month, and Wisconsin has a somewhat similar provision applying only to producer-distributors that distribute less than 10 quarts daily. As has been mentioned before, the New York law gives the Commissioner of Agriculture and Markets discretionary power in licensing distributors in the small communities. Alabama grants wide powers to its Board for controlling the extension of a milk business, i.e., a distributor's business. Approval is necessary by the Board and depends on the quantity of milk in the market, effect on public interest, and the capability of the dealer financially and otherwise. Besides its other licensing powers, Pennsylvania also gives its commission the right to issue permits for weighing or measuring to each milk dealer. This permit costs \$5 annually. Butterfat testers must also be certified by the commission and are required to pay an annual \$3 fee.

**Denial, suspension, and revocation of licenses.** The action of the control agencies and the ground for denying, suspending, or revoking the license of a licensee is well defined in most states. Upon application to the agency for a license, the applicant in the following states must convince the agency that he has adequate personnel and facilities as well as financial resources properly to conduct his business: Alabama, Florida, Indiana, New York, Oregon, Pennsylvania, and Wisconsin. Massachusetts, New Jersey, Oregon, and Pennsylvania also require that the applicant must state that he has complied fully with all the rules and regulations of the control agency.

Practically every state before suspending, denying, or revoking a license gives the person concerned notice and a hearing before taking action. A few of the states permit the respondent to show cause why his license should not be withheld. A provision in the Massachusetts law states that where the license of an applicant has been refused or revoked "for cause within the next preceding year" the opportunity for hearing, but not due notice, may be dispensed with in the case of an applicant or licensee. A statement in the New Hampshire law that is of doubtful validity provides that the board does not have to hold a hearing upon refusing a license. Virginia provides for notice and public hearing, but the act does not prescribe any grounds for such.

Each state law directly or indirectly grants to its board or commission authority to revoke licenses as a penalty for violation of orders or regulations. Considerable court action has resulted in those states in which the control agency has resorted to revocation of the licenses. It is claimed by many members of the industry that the revocation of a license is a severe penalty for infraction of rules that in some cases are not just and reasonable. It is suggested that the imposition of larger fines would accomplish the same purpose without exiling the licensee, except in some extremely intolerable cases.

**Bonding.** The bonding of milk dealers (as defined previously) or licensees is required in approximately 65 per cent of the states having milk control laws. Seven states do not require or have not mentioned bonding requirements in their laws. Virginia makes no mention of bonding within the law but in two of the markets that it has established in the state bonding is provided. Three states, Massachusetts, New Hampshire, and New Jersey, have bonding requirements for dealers under a separate act, not within the milk control act itself. New Jersey requires bonds of dealers, subdealers, or processors; New Hampshire requires bond or dealer must make satisfactory showing as to real estate ownership within the state. Those states requiring bonding stipulate the amount of the bond usually relating to the volume handled. The amount varies from \$1,000 in California to not more than \$100,000 in Pennsylvania. Other states may have smaller or larger amounts than the foregoing citations. New York makes provisions for exemptions, if the dealer can satisfy the Commissioner of Agriculture and Markets as to his financial position. Indiana has somewhat similar requirements; the dealer must file a bond or show by a financial statement that a 60-day supply of milk can be paid for. Alabama and Connecticut have similar prerequisites for bonding. Alabama states that should a dealer fail to pay for milk without just cause within a reasonable period the board may require a bond in sum twice the amount of purchases for the past 15 days. Connecticut requires that the dealer must pay for milk obtained within 2 months or obtain bond double the value of the amount of milk purchased the preceding month. Georgia stipulates bonds from \$2,000 to \$10,000 but will accept cash deposited with a bank or trust company in lieu of bond. Pennsylvania requires that an applicant for a license file a personal bond; if this bond is not adequate, he can be required to file a surety or collateral bond of not more than \$100,000. A cooperative does not have to file a bond. Subdealers must be bonded for \$300 for each route owned or operated.

Louisiana made no provisions for bonding in its original act, but on the application of the law the milk commission tried to force milk dealers to put up bonds. The undelegated bonding requirements of the Louisiana milk commission were declared void in the State Supreme Court case of February 7, 1940. A separate bonding act was enacted on July 2, 1940.

**Unfair trade practices.** Six of the nineteen states make no provisions in their acts as to what practices can be considered unfair competition or unfair trade practices. Alabama lists (1) false and misleading advertising, (2) misrepresentation of product, and (3) sales promotion schemes. To these California adds (1) payments, allowances or acceptances of secret rebates, or refunds, etc.; (2) giving of milk or cream, except to bona fide charities; (3) extension of special prices or services to certain customers and not to all; and (4) purchase of fluid milk in excess of 100 gallons monthly from producers or associations of producers unless a written contract has been entered into, which contract must contain certain provisions and be filed with the Director of Agriculture and Markets. A large number of states although not specifically listing the foregoing practices as being unfair, do consider them unlawful and subject to legal penalty. Secret rebates, discounts, refunds, and special services are strongly denounced. Other states list such destructive acts as being just cause for revocation of licenses. Vermont has an interesting provision, specifying that anyone intimidating a producer, causing him to withdraw from a producers' association, is guilty of unfair discrimination. The majority of states, under the powers given them in the act, whether unfair trade practices are prescribed within their laws or not, have set forth certain definite practices that they consider demoralizing and unfair for the milk market areas within which they operate, and that all members of the milk industry are to avoid. Wisconsin has a unique provision against unfair trade practices in giving the Director of Agriculture power to enjoin a person from employing practices that are detrimental and tend to cause needless waste and duplication. This power, if more widely interpreted, could be used to maintain the status quo of the milk industry in Wisconsin.

Materials have been obtained from Alabama, Virginia, and Wisconsin that provide good illustrations of trade practice regulations instituted by these control agencies. The Alabama and Wisconsin rules of fair trade practices are for any market in which milk control is in effect, whereas the Virginia trade practice regulations are for the Norfolk-Portsmouth market in which the milk commission is operating. The following rules of fair trade practices apply in the Norfolk-Portsmouth, Virginia market: (1) each

licensee is required to use store bottles in the wholesale trade; (2) deposit of 3 cents per bottle is required from wholesale purchasers (the 3 cents must be imprinted on the container); (3) each licensee shall make a duplicate sales slip for each wholesale transaction; (4) any distributor may submit bids asked for by a governing agency. Distributors are prohibited from any of the following practices: (1) paying for advertising directly or indirectly; (2) joining with a milk customer in a radio program; (3) providing a milk customer with various free services and articles; (4) entering into a contract to give premiums or prizes; (5) using other dealers' milk containers. A producer-distributor may, however, advertise his product by giving a free sample of one bottle of milk to a prospective customer for one time only within a period of 6 months.

A few of the Alabama rules of fair trade practices are as follows: (1) prevent buying, selling, or trafficking in other dealers' milk containers; (2) no licensee to give prizes or free gifts and services; (3) no licensee to become a party with the intent of making certain provisions of the law inoperative; (4) no licensee to give more than one quart sample of any bottled milk products in any month; and (5) no wholesale producer to transfer or obtain milk from other producers to supplement or maintain his quota.

The Wisconsin standards, which differ somewhat from the foregoing fair trade practices, follow: (1) it is unfair to use a salesman or driver who has been employed within one year previously by another dealer; (2) it is unfair for a person to solicit for milk on the route he covered within the year for another dealer; and (3) no distributor shall sell milk to a peddler, unless the peddler owns a plant holding a board of health permit for processing and distributing milk, except that licenses granted to peddlers prior to February 7, 1934, are exempt.

Florida is the only state that gives its milk control agency direct power to control the using, dispensing, or trafficking of milk bottles, cans, or other containers belonging to another firm. Alabama, Virginia, and Wisconsin consider such action an unfair trade practice subject to penalty if violated. Wisconsin and Virginia especially give detailed prescriptions for markings and use of milk containers.

The right of a control agency to establish rules and regulations gives it considerable power not specifically granted within the law itself. Many of the rules and regulations issued by milk control agencies in the several states have been contested by milk dealers as an undue delegation of legislative authority. Only in Louisiana has the commission been deprived of its right to issue such orders.

**Mediation and arbitration.** Arbitration and mediation of disputes or controversies arising between or among distributors, producers, and consumers is a power granted the control agencies in thirteen states. Six state laws make no mention of such power. Although New Hampshire and Vermont do not specifically mention arbitration and mediation they do state, "the Board shall secure the cooperation of those engaged in the industry to maintain fair and lawful trade practices."

The decisions of the Alabama control agency in mediating or arbitrating such controversies are conclusive and binding on the parties involved. Connecticut makes a somewhat similar statement except the findings are binding and final only by agreement of the parties in advance of the hearing. Rhode Island does not grant the power specifically, but the law prescribes that the Board shall endeavor to effect amicable reconciliation of differences between milk interests.

**Limitations and exceptions.** Each state usually places certain limitations or exceptions on the powers of the control agency or the application of the provisions of the act in the various markets. One limitation in all the laws is that the provisions of the respective act shall in no way conflict or abrogate, but may supplement existing health or sanitary laws of any municipality, state, or county, and the milk dealer licenses shall be required in addition to any other licenses that may be required. The State of New York goes further by stating that no health officer of any county, city, or village shall approve an additional milk supply without first satisfying the commissioner that the added supply is necessary for the city and will not deprive another city of its supply. A somewhat similar restriction by a New Jersey city was declared void in the case of *Sheffield Farms vs. Seaman* (1935) (114 N.J.L. 455).

Approximately half of the states prescribe exceptions for producers who milk or distribute milk from a certain number of cows. The Oregon law states that any producer with more than one cow, who distributes his milk, must be licensed and pay any poundage assessment. Georgia permits an exemption of producers from provisions of the act as long as they milk fewer than six cows. Another common limitation or exception provided by most state laws is that nothing in the acts shall prohibit a cooperative from blending proceeds to its members and making deductions if authorized by its members. The 1935 California law read that "no marketing and stabilization plan may involve a limitation upon the production of fluid milk or cream, or the development of monopolies in either production or distribution." It appeared, therefore, that the development of cooperatives was favored, but the

recent amendments have reversed this provision to read that “nothing in this chapter (735.1) shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream.” This amendment might provide a limitation to the development of cooperatives.

Three of the state laws specifically permit the donation of milk to charities. Milk sold out of the state is not usually included in the determination of license fees. New Jersey and Alabama provide that should any municipality suspend or revoke a license of a dealer the board shall automatically suspend the dealer’s license until the dealer is reinstated by the municipality. There are many other limitations and exceptions adopted by the several states.

### PROVISIONS AS TO PRICE REGULATIONS

Fixing producer prices, resale prices, and methods by which producers are to be paid are perhaps the most complicated provisions within the laws or within the orders issued by the control agencies. Quota and pooling plans have been avoided by the majority of the states that have had their laws on an indefinite basis. Those states that started out with permanent laws or have enacted permanent legislation since the passage of the original law have made definite progress toward incorporating some type of pooling mechanism and some scientific system for paying producers. Such provisions appear necessary to provide an equitable means of distributing returns to producers in a market and for controlling surplus milk, especially in the large markets. Those states that have done the pioneering in the use of various pricing mechanisms have revised their orders a great deal as a result of changing conditions. The producer-distributor has been the member in the milk industry who has been the chief source of worry to the agencies trying to set up equitable price structures and payment mechanisms.

**Requirements as to price fixing.** All but five states’ laws prescribe standards that the control agency shall follow in establishing prices. The Rhode Island law provides that in determining such prices the control agency should apply reasonable regulation. Wisconsin did prescribe standards in its early law that the Director of Agriculture and Markets was to have used as a basis for establishing price schedules, but the recent law withholds these standards that allowed the Director to prescribe “terms and conditions” as may be necessary. Louisiana is the only state that does not make some definite reference to prices paid to producers or to be charged consumers, although the law does make vague reference to the price of milk under the powers of the milk commission. Each of the other fourteen states prescribes

some type of standards by which the control agency is to set equitable producer and resale prices. The standards set up by the several states consist of the following that are to be considered: cost of production and distribution, fair return to producer and dealer, reasonable costs for hauling and processing, balance between production and consumption, purchasing power of the public, and relation of milk prices to prices of other foods. In almost every state the agency was to consider such prices as would adequately protect the milk industry and insure a sufficient supply of pure and wholesome milk. Florida, Montana, and Pennsylvania make special mention of the welfare of children. In fixing prices to producers, the control agencies use the standards that are set up for them within the law.

Only one state, California, specifically mentions that the price of fluid milk and cream paid to producers shall be based on the price of manufacturing milk and cream. The California system provides that the cost of producing fluid milk and the cost of producing manufacturing milk be determined, the difference to be added to the price of manufacturing milk to arrive at the fluid milk price. (20) Using this as a base, a formula for an automatic price change has been devised, which has been upheld in the California State Supreme Court in the case of *Ray et al vs. Parker, Director of Agriculture* (99 Cal. Dec. 240; 15 (2) 275). Whenever economic conditions change sufficiently to cause changes in the price-determining factors, the formula automatically registers a change in producer prices for Class I fluid milk. Although California is the only state directly providing such pricing provisions, a great number of the state control agencies without doubt consider the price of manufacturing milk in computing producer prices. Many of the states did not consider the relation between fluid milk prices and manufacturing milk prices at the beginning, and they found that when these prices were out of proportion milk would flow toward the market offering the better price.

New York will establish producer prices at the request of 35 per cent of all producers and the acceptance of 75 per cent of all producers. The Director of Agriculture and Markets may rescind such price provisions at his own motion or at the request of 35 per cent of all producers. The Florida, New Hampshire, and Vermont agencies may fix prices on complaint from producers or on their own initiative. Maine is required to change prices at the request of producers. The Indiana board may fix prices on its own initiative or by approval of schedules filed by distributors or approval of prices arrived at by two or more distributors and one or more cooperatives or by the approval of price schedules adopted or recommended by the local milk committees.

Three states require the milk control agencies to set minimum wholesale and retail prices when producer prices are established. Fifteen states grant control agencies permissive powers to establish minimum resale prices, while five of these extend this authority to the fixing of maximum resale prices. Massachusetts, Oregon, and Pennsylvania make provisions for fixing the boundary of the milksheds in which price provisions are to be effective and from which milk is to be obtained to supply a particular market.

New York may fix handling charges as well as prices and require that producers whose milk is bought and shipped to another state that regulates prices are to receive those prices of said state less transportation costs. This particular provision might have doubtful validity, especially since the milk enters into interstate commerce. The board in Massachusetts may also fix interdealer prices. The Pennsylvania commission has discretionary powers as to fixing prices on milk used for manufacturing purposes. Wisconsin has a somewhat different requirement in that the Department of Agriculture in fixing price schedules is to consider terms of any collective bargaining arrived at between producers and dealers. Georgia and Montana have a unique provision that requires that the producer prices established by the control agency shall be not less than one-half the price the consumer has to pay.

**Pricing.** Four different methods for paying producers for their milk are the flat price plan, class-use plan, basic-surplus plan, and the combination price plan. The flat price plan calls for one price for all milk delivered by the producer. The class-use plan develops classes of milk as to its usage. The basic-surplus plan calls for two or more prices, and the proceeds from the sale of milk are distributed to the producers according to the market value contributed by each producer. The combination price plan combines the class-use principle, in that milk is sold to the dealer for its market value in its different uses, and the basic-surplus idea, in that proceeds are returned to each producer on the basis of his contribution to the market value.

A great number of the state laws are not specific as to the plan that should be used for paying the individual producer. A majority of the states provide for a class-use system of pricing market milk. The number of classes varies from two in some states to as high as nine in New York. A large number of these states using the class-use system also provide for base rating, which means that they are using the combination pricing plan. Oregon uses the basic-surplus price plan without the class-use system; one price is paid for base milk and a calculated price for surplus. The Vermont board may fix prices for milk on different grades, not specifically according to the class-use basis. Pennsylvania, besides providing for classes for the market



milk, provides additional classifications in some of its orders. These are: (1) unaccounted milk; (2) distressed milk; (3) milk resold in other states; and (4) milk sold by dealer to dealer.

Inasmuch as the control agencies in most states have discretionary powers as to the type of price plan to employ, this permits the use of the price plan best adapted to a particular market. As a result, the pricing plans used within a given state may not be uniform. On the other hand, coordination of different price plans within the markets of the state might be difficult, and the control agency might find itself "swamped" with enforcement problems.

Although every law does not specifically mention whether the price provisions as established apply to the state as a whole or merely to a particular market area, it can be assumed that the pricing plans are in every state limited to a particular area. Prior to the 1939 amendment Oregon had a state-wide pricing plan in effect with one set price for every market regardless of location. As it was found after a few years of experience that cost conditions varied considerably over the state, the above-mentioned amendment was attached to the law limiting the price-fixing powers of the board to a particular market, and requiring a separate order for each market.

The majority of states, regardless of price plan used, also have provisions for different prices for milk based on the grade of milk sent to the market. The grades of milk are established solely on the sanitary requirements established by the states, cities, or counties that may apply to a marketing area. One grade or more may be used within a particular use-class of milk as established in a price plan or without the other plans. In some states a premium price is paid for Grade A raw milk. Other states also consider transportation charges and butterfat differentials in determining prices to producers. When all these factors are considered, the pricing mechanism becomes too complicated for the average dairy farmer to compute, thus necessitating a staff of accountants and statisticians to aid the control agency in determining prices.

Rhode Island allows the producers, subject to certain restrictions, to determine the prices that dealers must pay them. This schedule of prices is then supplied the dealers and when published in the newspapers of the state constitutes an official order, and the dealers must pay the prices as scheduled or be subject to penalty for violation of an order.

Those states using the combination price plan or base-surplus plan, as described above, make provisions for the establishing of producers' quotas. Virginia speaks of those quotas as "basic allotments," New Jersey refers to them as "norms," and Connecticut considers them as part of a "production

rating system." The quota or base is an amount assigned to each producer as his share of a particular market as determined by previous performance, with the low producing months of a selected year or years as the base period. The producer is expected to continue producing enough milk to fulfill his base requirement and as a result receives a higher price for milk produced within the base or quota and a lower price for all milk delivered in excess of his base or quota. The quota system is used as a means of encouraging producers to maintain a somewhat constant production of milk throughout the year and to reduce surplus production, which is the cause or can be the cause of a great many problems in a milk market. The quota system is severely denounced by many producers who distribute their own milk, and the plan has been vigorously contested in the courts. The basic-surplus plan works more efficiently if a market-wide pooling system is used.

A good illustration of how these various pricing systems operate can be found in the marketing orders issued in Oregon, New York, Virginia, and Wisconsin. Virginia and Wisconsin make use of the combination pricing system; New York has adopted the class-use system; and Oregon uses the basic-surplus plan entirely.

The Oregon law through its quota system probably provides the most rigid supervision of the producer of any of the states with milk control laws. The control board also prevents producers and distributors from transferring from one market to another without the board's approval.

**Methods of paying producers.** The methods to be used by distributors to pay producers are not mentioned in the laws of Florida, Georgia, Louisiana, Maine, Montana, and Vermont. If pooling is being used, it has been set up at the discretion of the control agency. The remaining state laws permit the control agencies to require the individual-dealer type pool or the market-wide pool. The New Hampshire law provides that the flat-price plan may be used to pay producers. This plan is seldom used, especially in the large markets and where alternative opportunities for the disposal of milk by the producer are many.

The individual-dealer type pool is an equalization plan that is handled by the individual dealer for the benefit of his own producers. Under this plan the producers receive a prorated share of the total price of the milk delivered. Under the individual-dealer type pool the producers for a given firm may receive more or less per unit than is paid to other producers in the market. The discrepancy arises because one dealer may be able to sell more of his milk as Class I or Class II milk that usually bring the higher prices. Where the state law provides for individual-dealer type pools, the control agency is

obligated to check the dealer's records, books, and reports to satisfy itself that the dealer pays his producers equitably.

The market-wide pool operates under the principles explained under the individual-dealer pool, except that the control agency, a local control board, or a representative of the agency manages the equalization pool. The pool is somewhat of a clearing-house for all distributors within the particular market. This pooling arrangement provides a method of making uniform the producers' price per unit, regardless of the dealer served. The market-wide pool provides for the pooling of products of like quality received from all producers in the market. After the expenses of the pool are deducted, the net proceeds are prorated to the producers on the basis of their contribution to the pool. The principles involved in the operation of the market-wide pool are the same in all markets, but the mechanics of paying the producers may vary.

This market-wide pooling system is more complicated than other systems, but it helps to iron out many difficulties that arise among and between producers and distributors. The greatest difficulty with this type of equalization arrangement is that the producer-distributors may fail to report the correct amount of their sales. This difficulty becomes even more apparent under the basic-surplus plan used in Oregon under which one price is paid for butterfat used in milk and cream for fluid consumption and a lower price for surplus butterfat. Naturally, producer-distributors try to maintain their yearly production to equal their bottle and can trade, which pays the highest price, and to avoid the production of surplus. As the surplus price reduces the equalized payments to all producers, the producer-distributor with chiefly a bottle and can trade may report a smaller amount of milk sold in fluid consumption channels than was actually sold or he may claim larger surplus sales. Either practise results in decreased payments into the pool, thereby giving the producer-distributor a price advantage as a producer over all other producers in the market. It is not the intention of the authors to infer that there is intentionally a general violation of the law within the ranks of the producer-distributors. The condition referred to arises primarily from the unwillingness or inability of producer-distributors to maintain adequate records.

The Oregon system of market-wide pooling with a basic-surplus price plan in quota markets is worthy of review. According to a report, *Milk Control Laws*, issued by the United States Department of Agriculture,

"The board's orders operate to yield each qualified producer the basic pool price for all milk sold by him up to the amount of his quota and regardless of whether such milk is actually sold as fluid milk at the minimum price or in manufacturing channels at lower prices. The orders also provide that the pro-

ceeds of all milk sold in excess of his quota shall be credited into the surplus pool (regardless of the price at which it may be sold); and that after deducting the board's expense the average price received for surplus milk shall be distributed to producers in accordance with the quantity of their respective surplus sales. Incident to market-wide pooling under the board's orders is the fact that a producer may not receive the full minimum price for his entire quota, even though he may have sold it all as fluid milk for the minimum price, because of the inability of other producers to sell the entire amount of their quotas for human consumption. The basic price is thus reduced and in the equalization process those who have received the full minimum price must of necessity remit a portion of their receipts in order that the returns may be uniform to all."

Oregon producer-distributors were exempt from pooling and rating provisions in the Act of 1933. A court decision (*Meyer et al vs. Oregon Milk Control Board and Brandes Creamery*) declared the exemption to be unlawful discrimination and invalid. In the Portland market, when the surplus within the basic pool exceeds by 5 per cent or more all delivered quotas on the market, this group is required to make equalization payments up to 5 per cent of such surplus and no more. In the Eugene market the producer-distributor's quota is his sales of fluid milk and cream produced by him in the bottle and can trade. He must carry a 5 per cent surplus for the market and is subject to payment of equalization thereon. Surplus over that is carried by other producers. Producer-distributors have continually opposed paying any equalization.

In 1933 a state-wide pooling arrangement was undertaken in Connecticut but was declared unconstitutional.

The recent California amendment allows the Director of Agriculture and Markets to provide equalization provisions for all milk sold to distributors for *pasteurization* purposes, if approved by 65 per cent of all producers by volume and number. The New York law gives the Commissioner of Agriculture and Markets power to establish equalization for producers if requested by 75 per cent of the producers in the market.

As has been mentioned under producer prices, almost every state makes provision that nothing in the law shall prevent an association of producers from blending or equalizing the proceeds of its members.

**Resale prices.** Whether or not state control agencies should set resale prices is one of the most controversial issues regarding milk control laws at present. Resale price provisions have been incorporated in the majority of the laws at the insistence of the distributing group. This group felt that if the control agencies were going to guarantee a minimum price to the producer then the distributing group should be protected likewise by a guarantee of a minimum price from the consumer. This is one reason why distributors

have been able to maintain their spread rather consistently through good or bad years.

Connecticut and New York, following the lead of the Federal Government, have abandoned the fixing of minimum resale prices. The Louisiana law makes no mention of resale prices. Alabama, Florida, Georgia, Pennsylvania, Vermont, and Virginia give their control agency the power to set minimum and/or maximum retail and wholesale prices. California, Maine, Massachusetts, Montana, New Hampshire, New Jersey, Oregon, and Rhode Island give their control agency power to fix only minimum retail and wholesale prices. Massachusetts may fix these minimum retail or wholesale prices only on petition from 25 per cent of the producers in the market. They are set on the assumption that producers' prices cannot otherwise be maintained. In California, Oregon, and Pennsylvania the fixing of minimum resale prices is mandatory whenever producer prices are established. In other states the control agencies seem to have the power to fix minimum resale prices at their discretion.

Wisconsin allows its Department of Agriculture to fix a schedule of resale prices. The Indiana Board may fix minimum resale prices if it finds that an emergency exists in a market and the enforcement of the act is hindered, and after the proper request by 30 per cent of the number of dealers handling 70 per cent of the milk or vice versa. The only restrictions are that such prices must be just and reasonable. Approximately one-half of the states besides mandating or giving the control agency the power to fix resale prices also state to whom these resale prices shall apply. A typical example follows: milk dealer to store, store to consumer (consumption on or off the premises), milk dealers to milk dealers, milk dealers to consumers, and one person to another for commercial purposes.

Several of the states list the grades and classes of milk for which resale prices are to be fixed. An example is the resale schedule adopted by New Jersey including Grade A; fluid milk other than Grade A; heavy, medium, light, and sour cream; and buttermilk. Vermont specifies that resale prices apply to sweet table cream, whole milk, medium cream, light or coffee cream, and certified milk, which takes a higher price than whole milk. An example of an Oregon order indicates that minimum prices are set for  $\frac{1}{2}$  pints, pints, quarts, and gallon lots in cans, at wholesale and retail for 4 and 5 per cent milk. Light cream (18-22 per cent butterfat) and heavy cream (30-33 per cent butterfat) are also priced under the same size category. Bulgarian buttermilk "with butterfat" is priced the same as 5 per cent milk, and chocolate milk the same as 4 per cent milk.

The California law requires careful investigation before minimum retail or wholesale prices are to be established. The following economic factors are to be considered: (1) quantities of fluid milk and cream delivered, (2) cost of cream and milk to distributors and retail stores, (3) quantities normally required, (4) reasonable cost of handling fluid milk or cream, (5) purchasing power of the public. In establishing these prices the Director of Agriculture must determine that such prices are not more than reasonably sufficient to cover all necessary costs, according to the method or type of distribution, including a reasonable return upon necessary capital invested. These prices shall be sufficient to maintain in the business of distributing fluid milk and fluid cream, or both, such number of reasonably efficient retail stores and distributors of fluid milk and cream as are necessary to supply consumers with the required supply. Also these prices are to protect the interest of consumers of fluid milk, fluid cream, or both, in such marketing areas by insuring to them adequate and efficient distribution facilities.

Some miscellaneous requirements or limitations follow: Wisconsin may require labeling of containers to reflect the different resale price brackets; Florida states that the purchase of milk by a store contrary to the price determined by the board shall not be deemed a violation of the law by the purchaser; and Georgia requires that the board shall give the licensee 10 days prior notice before changing prices.

None of the state laws makes mandatory a cash and carry differential. Several of the control agencies have made provisions in their price orders for lower prices to customers who call for their milk at the stores. Quantity discounts are used considerably. Most orders provide for lower prices on milk used by school children or that used in relief.

#### ENFORCEMENT PROVISIONS

Almost every state milk control law describes as being unlawful certain acts that if pursued would be considered violations of the milk control law. Violations of the rules and regulations of the several milk control agencies have been numerous. Offenders in many instances have been prosecuted, and these court cases have served to build precedent for subsequent decisions. The courts of the State of New York have prosecuted more milk control cases than any other state courts. The milk control division of the Department of Agriculture and Markets of that state has been quite active in pressing its orders against violators and into the courts should its orders be challenged, as has been done in a large number of cases. These court decisions have aided other states in designing their legislation and procedure so that it

would be more effective and less likely to be challenged by the members of the milk industry.

**Unlawful acts.** A great number of actions are deemed unlawful, but the majority of the states list specific actions, dealing principally with buying and selling of milk, as being unlawful. These can be summarized as follows: (1) buying and selling of milk unless licensed, (2) buying and selling at prices below those set by the control agency, and (3) indulging in unfair trade practices in the disposition of milk. Connecticut, Georgia, and Montana make it specific that it is a violation for licensees to fail to obtain a license at the specified time. Connecticut, Montana, New Hampshire, New Jersey, Oregon, Virginia, and Wisconsin provide penalties for persons failing to answer a subpoena. Florida, New Jersey, New York, Pennsylvania, and Rhode Island consider as unlawful acts and subject to penalty the purchase of out-of-state milk at lower prices than those paid in the state and the purchase of milk within the state for out-of-state shipment at lower prices than provided by the act. New Hampshire and Vermont make no statements as to what are considered unlawful acts but penalties are provided for several offenses. New Jersey limits unlawful acts only to milk dealers. Florida and Montana add that any member of the control agency divulging confidential material has committed an unlawful act and may be prosecuted. Florida also forbids sale and trafficking of milk in milk containers owned by other dealers or the actual possession of those containers by another. Massachusetts has recently added a so-called "locality discrimination" clause, which prohibits dealer discrimination of prices to buyers for the same kind of product in the same locality. Rhode Island specifies that one cannot refuse to deliver or a dealer to accept milk without 15 days written notice unless the failure to deliver or to accept is due to uncontrollable causes. Louisiana has a different provision stating that a person refusing to deliver to officers or authorized agents of the Louisiana Milk Commission a sample of milk or milk products shall be guilty of violating the milk control act.

**Penalties.** The penalties provided by the state laws relative to violations of the law and the acts deemed unlawful vary from fines of \$5 up to \$5,000, and jail sentences from 10 days up to 1 year. Besides these penalties the control agency reserves the right to refuse, suspend, or revoke a license of any licensee, if he does not conduct his business as required. This power, if indiscriminately or unjustly applied, can be severely damaging to the person or persons affected. This power, moreover, delegated as it is in most cases to politically appointed boards or commissions, could be used to eliminate the

smaller members of the industry who might not have the financial power to protect themselves in lengthy court litigation.

For violating provisions of the act, only six states specify fines alone ranging from \$50 in New Jersey and Rhode Island to \$1,000 in Indiana. The \$50 fine in New Jersey and Rhode Island applies to the first offense; for subsequent offenses the fine in New Jersey is \$200 and in Rhode Island \$500. All the states provide fines and jail sentences or both for violation of the act. The exact penalties prescribed in New York and Georgia are not known. Fines range from \$10 in Louisiana to \$5,000 in Wisconsin besides possible imprisonment. The term of imprisonment varies from 10 days in Louisiana to not more than 1 year in the majority of the other states. All of the states provide limits to their fines or jail sentences, i.e., either the minimum or maximum fines and days of imprisonment. The average fine is limited to about \$500 while the average jail sentence with the fine or without is about 6 months. More than one-half of the states consider each day in which the violation occurs a separate offense; hence a person violating provisions of the act in such states as Oregon or Indiana that apply heavy fines will suffer heavily should the violation take place over several days. Connecticut provides a fine of \$100 and/or imprisonment of not more than 3 months but prescribes that should additional violations occur the violator shall have his license revoked. Pennsylvania provides fines of not less than \$25 and not more than \$300 for the first two offenses, but should the offender fail to pay the fine he is subject to jail sentence of not more than 30 days. The third offense brings a fine of not less than \$500 and not more than \$1,000 and/or imprisonment of not more than 1 year.

Several states provide penalties for making false statements in license applications or for violating other provisions of the licensing requirements. Indiana provides a \$50 fine for a milk dealer making false applications for a license, while Florida requires a fine of not less than \$300 and not more than \$1,000 and/or imprisonment of not more than 1 year for making a false statement relative to the tax required of dealers; 2 per cent is added to the tax if the payment is delinquent. Georgia and Montana add a 10 per cent amount to the license fee payment that is delinquent. Wisconsin stipulates a fine of not less than \$5 and not more than \$100 and/or jail of not more than 30 days for violating licensing requirements.

Those states deeming failure to answer a subpoena a violation also specify penalties for such failure. Connecticut and New Jersey provide jail sentences only. Montana provides a \$600 fine. New Hampshire, Oregon, and Virginia require a fine of not more than \$100 and/or jail sentence of not more than 90 days.



Alabama and Florida also prescribe penalties for those who divulge confidential information. The fine in Alabama is not less than \$100 and not more than \$1,000, while Florida exacts a fine of not more than \$500 and/or jail sentence of not more than 1 year.

A few other miscellaneous penalties are provided such as in New Jersey, where the milk that is subject to violation may be seized and sold, with the money going to the state. Wisconsin states that a foreign or domestic corporation that violates certain provisions of the law shall forfeit its rights and in the case of a domestic corporation shall forfeit its charter. In Florida persons trafficking with milk containers other than their own are subject to a fine of not more than \$500 and/or jail sentence of not more than 60 days.

**Legal remedies accorded the control agency.** In order to secure enforcement of the provisions of the act and the various rules and regulations promulgated by the control agency, the law in all but three states specifies the procedure to be employed by the control agency in administering the law. The states making no specific provisions for enforcement are Maine, New Hampshire, and Vermont.

Almost all of the other states give the control agency the choice of taking violators before a court of law or equity. Some states specify the court to be used. In every state that provides some enforcement procedure the control agency is allowed to obtain an injunction against the violator of an act to prevent him from continuous performance of the same act, and in some states the right of mandamus is granted. Most of the states that give their control agency the power to enjoin do so with the specific limitation that the agency may do so without proving that a legal remedy exists. Three state laws specify that the control agency shall not be required to post a bond if involved in a court case.

The Oregon Milk Control Board may act through the circuit court, to which is assigned the duty to compel obedience through attachment proceedings. Rhode Island specifies only that the control agency apply to the courts for enforcement. Those states deeming the failure to answer a subpoena an unlawful act and subject to penalty also specify that the court shall compel obedience through attachment proceedings.

A new and speedier method of dealing with offenders is being introduced in many of the states; namely, using a summons only. The violator is summoned before the control agency or a court and given a cease and desist order or given an opportunity to amend his wrongdoings without being forced through a costly court procedure. In the case of revocation or suspension of a license, the licensee has an opportunity to show cause why the license should not be revoked.

**Legal remedies accorded the aggrieved parties.** The majority of the state milk control laws give the aggrieved person or persons the right to file a writ of certiorari\* after reasonable notice by mail or in person. After the decision of the control agency, the appellant is usually given a certain number of days, varying from 10 to 30, in which to file the writ. Then the control agency is given a period of approximately 30 days in which to answer the charges made in the writ. Upon review the court may modify or abide by the decision of the board or reverse the decision in favor of the appellant. In the case where the control agency seeks enforcement through an injunction and the appellant demands a review and a stay of action, the court in some states is required to ask the appellant to file a bond to cover any damages that might accrue from his continued actions in violation of the injunction should he lose the case. Such action is usually required where price fixing orders are being challenged. New Hampshire and Vermont prescribe that the order being contested is in effect as specified by the control agency until the case is settled and the agency be ruled against, and that any person seeking relief must bear the burden of proof. The Alabama law specifies that a case of this nature is given preferred setting and is to be heard as soon as possible. It also denies the right of either side to present new evidence.

The only specific provisions granted in Oregon as legal remedies for aggrieved persons concern the refusal, suspension, or revocation of a license. They provide that the aggrieved party may obtain a review of the Board's order by filing a writ with the circuit court. By not having specific provisions for appealing orders other than those concerning licensing, the aggrieved person must appeal to an equity court to enjoin any provisions of the act. The Vermont law prevents the aggrieved party from obtaining an injunction against the board. Virginia limits legal remedies to licensing provisions and price fixing orders, and Pennsylvania to licensing provisions. Florida also specifies that the circuit court is the only court that can review suspension, revocation, or denial of a license. Most of the states provide that before the appellant takes his case into the higher courts he be given an opportunity for rehearing before the control agency and should he be again ruled against, he has the right to appeal to the higher courts.

Montana's law states that action may be brought against the Montana Milk Control Board but does not specify the procedure to be followed. Louisiana's act makes no mention of legal remedies for aggrieved parties.

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\* The writ of certiorari is an order from a superior court to a lower court to obtain for review its trial records. It is obtained upon complaint of an aggrieved person that he has failed to receive justice or cannot obtain an impartial trial in an inferior court.

Connecticut will not grant an appellant stay of action if he failed to pay for milk for 3 months or more without reasonable cause.

**Legal status.** There is hardly a state milk control law that has escaped being contested as to its constitutionality either in its own state courts or in the higher Federal courts. Several of the state laws, such as in Washington, Michigan, and others have been declared unconstitutional. The New Hampshire law was declared invalid but was soon reinstated. The Maine law at present is being contested. The rest of the milk control laws have withstood several severe attacks as to their constitutionality, and every time a state's law is upheld an additional precedent is established that makes the others somewhat more secure. Yet every order or regulation issued by the control agency of a state may strike a "hornet's nest" and the law is likely to be dragged into court again; chances are that it may be declared invalid, regardless of precedent. It all depends on the decision of the judge or jury, and opinions are known to have changed.

Every state has issued a large number of restraining orders or rules and regulations controlling members of the milk industry within a particular market. New Jersey appears to have done the greatest amount of enforcement work of any milk control agency. In the first 2 years of its operation the milk control board in that state had conducted approximately 1,500 hearings involving dealers, principally those who were operating without licenses, cutting prices, failing to make reports, et cetera, collecting approximately \$13,000 in fines alone. Massachusetts and Rhode Island have also issued a great number of orders against violators. A complete list of all state orders and rules and regulations issued against violators is not available, but the total number issued by all control agencies is about 5,000.

The number of cases that have been in the courts of the several states and in the Federal court is too great to permit an analysis of all court decisions and rulings, but it is of interest to note some of the more important judicial interpretations. As has been mentioned, precedent was almost entirely lacking prior to 1933 relative to economic regulation of the milk industry through price fixing. About 1876 the United States Supreme Court, in the so-called "granger cases," did hand down some important decisions that granted the states power to fix maximum freight rates and railroad fares and also permitted public warehouses to make charges for the storage of farm products.

The *People vs. Nebbia* case as decided by the Supreme Court of the United States in 1934 is by far the most outstanding and most cited piece of judicial interpretation relative to price fixing since the early "granger cases."

This case involved the New York State milk control law and was filed against a man by the name of *Nebbia* who chose to sell milk below the prices established by the control agency. The Supreme Court upheld the New York law in a five to four decision and Mr. Justice Roberts in the majority decision stated: "Price control, like any form of regulation is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." (24) This decision not only established other milk control laws more firmly by giving the enforcement agency more confidence in its actions but has also been used extensively as a precedent for the establishment of prices on other commodities besides milk.

Other important decisions rendered by the courts with respect to the validity of the New York law include the *Baldwin vs. Seelig* case, which was also decided by the United States Supreme Court. A unanimous decision was rendered by the judges to the effect that a state cannot fix prices on milk coming from beyond its borders. This decision invalidated the provision in the New York act that permitted the milk control decision to regulate such milk. In another case arising in New York in 1939, *Milk Board vs. Eisenberg Co.*, the United States Supreme Court ruled that a state could prescribe minimum prices to be paid by milk dealers to producers even though the milk was shipped to another state and sold in that state. Eisenberg sold in New York all the milk that he purchased in Pennsylvania, but only about 10 per cent of all the milk produced in Pennsylvania was sold in New York. (16)

Another important New York case was the one involving *Borden's vs. Ten Eyck* in 1936, in which the United States Supreme Court held that the one-cent differential that was granted unadvertised brands as against advertised brands was not arbitrary or discriminatory. According to the court, that difference between the amount charged per quart by those distributors selling unadvertised milk brought about an economic balance between the two types of dealers. This same provision in the New York law permitted only those dealers in the market prior to April 10, 1933, to sell the unadvertised milk at the 1-cent lower price. This provision was declared invalid in the *Mayflower Farms Inc. vs. Ten Eyck*, in 1936.

The Director of the Division of Milk Control in the State of New York has indicated that the Division has had to go through considerable litigation with the New York State Guernsey Breeders Cooperative Association, Inc., which had refused to pay, or permit its buying dealers to pay, into the equalization pools as provided for the Niagara Frontier and Rochester milk orders. The Court of Appeals upheld the milk control division in requiring these

producers to make payments into the equalization fund as well as upholding the validity of the two milk orders. In a recent case, *Seneca Guernsey Farms vs. Holton V. Noyes*, decided December 3, 1940, the Court of Appeals upheld the commissioner in refusing to grant this organization a license with the following statement, “. . . if a license is granted to applicants, it will tend to disturb the stability of the market and bring about a decreased return to producers. In short, it will tend to a destructive competition in a market already adequately served, and it does not appear to be in the public interest.”

Experiences with the Wisconsin milk control law in the courts provide an excellent backlog of precedence for other states. The most important case in Wisconsin was the *State ex rel Finnegan vs. Lincoln Dairy Company*, in which the Supreme Court of Wisconsin upheld the 1935 milk control law, declaring that price fixing is not unlawful, and the milk control law is not class legislation; an invalid delegation of legislative power was not granted. In the case of *Gagnon vs. Department of Agriculture* the court held that one applying for a license cannot in the same proceeding assert that the law is unconstitutional, and one making donations to hospitals that were in fact rebates and discounts, and selling overtest milk was properly denied a license. These same provisions were upheld in the case of *Golden Harvest Dairy Co. vs. Department of Agriculture and Markets*. The only case lost by the department was the *National Guernsey Dairy, Inc., vs. Department of Agriculture and Markets*, in which the findings of the Department of Agriculture and Markets that the applicant was not “fit and equipped” were not sustained. Evidence of “lack of sufficient capital” was insufficient. The company went bankrupt 2 months later.

Two other cases have been argued before the Supreme Court of Wisconsin; one relative to the Department’s authority to restrain a producer-dealer from operating in a market without a license; and the other involving the Department’s right to restrain retail stores from operation in violation of the market order with respect to sanitation and resale prices. Decisions have not been handed down as yet (May 1941).

In Alabama the most important case has been the *H. G. Franklin vs. State of Alabama* case in 1936, which involved the constitutionality of the act, but the court upheld the act and stated that it did not violate the Fifth and Fourteenth Amendments of the Federal Constitution.

The two leading cases in California—*Ray vs. Parker*, decided by the California Supreme Court on April 11, 1940, and *Jerseymaid Milk Products Co. vs. Brock*, 13 Cal. (2d) 620—have attacked the constitutionality of the

California law but have failed. In the Ray case the method used by the Department of Agriculture in fixing producer prices was attacked. This decision has especially speeded the administrative procedure of the control agency and provides solid groundwork for establishment of equitable prices.

The Connecticut cases of *Pierpont vs. Milk Board* and *Milk Producer Dealer Association vs. Milk Board* of 1933 are the most important court decisions in that state. These plaintiffs challenged the validity of the equalization plan after the board had attempted to enforce an injunction for failure to pay into the equalization pool. The court held that there was no specific or implied grant of power to support the equalization plan. The board dropped the plan and refunded all equalization money in its possession.

In Indiana the outstanding case, so far as is known, is the case of *Milk Board vs. Frank Albert and Delbert Schafer* in the Superior Court and *Frank Albert and Delbert Schafer vs. Milk Board* in the Supreme Court of Indiana in 1936. The Milk Board brought the producer-distributors to trial for failure to take out licenses. The pair challenged the Milk Board's right of access to books, designation of natural marketing areas, allotting producer bases, establishing reasonable trade practices, provisions for market-wide pools, deductions from payments made by distributors to producers, and the fixing of minimum prices to producers or resale. The Superior Court upheld the Milk Board and the decision was appealed to the Indiana Supreme Court, which sustained the act; sustained the lower court which held that the Milk Board had no authority over out-of-state milk; that the legislature had no power to compel an appellate court to decide a case in 90 days.

As far as is known, there have been no important court cases regarding the milk control law in the state of Massachusetts. Several cases have reached the Superior Court, and all have been decided in favor of the milk control board.

The most important case in New Hampshire has been the *Ferreti vs. Jackson* case in 1936, which declared the New Hampshire law unconstitutional. This decision has been discussed in other parts of this report.

The constitutionality of the New Jersey act was upheld in the case of *State vs. Newark Milk Company*. In this case the issue was selling milk at prices less than those specified by the board.

The Oregon law has withstood several attacks as to its constitutionality. The principal cases were *Meyer et al vs. Milk Control Board and Brandes Creamery* in 1936, and *Board vs. Oldenberg*, and *Savage and Fox vs. State*, in 1938. In the first case mentioned, Meyer sought to enjoin the pooling provisions of the law and attacked the constitutionality of the minimum price

fixing provisions. The court upheld the price fixing, licensing, and market-wide pooling but declared void the section that exempted producer-distributors from the pooling and base-rating provisions. In the second case mentioned, *Board vs. Oldenberg*, the Milk Control Board was able to prosecute a producer-distributor for failing to get a license. In the last case mentioned, *Savage and Fox vs. State*, the plaintiffs were producer-distributors who tried to prevent the Milk Control Board from setting up pooling and production quotas involving themselves. The Circuit Court upheld the act and after being appealed to the Oregon Supreme Court the appellants again lost.

An interesting case evolved from the courts of Pennsylvania in 1936 pitting *Rohrer's Med-O-Farms Dairy vs. Milk Control Board*. In this case Rohrer had willfully paid his producers less than the minimum prices, and the board ordered him to cease and desist from operating as a milk dealer. The Court of Common Pleas upheld the Board, but upon appeal to the Superior Court the decision was reversed and the act was declared unconstitutional. The case eventually ended up in the United States Supreme Court that upheld the Board and the Court of Common Pleas.

Two cases in Virginia are worthy of mention. The case of *R. J. Reynolds vs. Milk Commission* was settled in March 1935 by the Supreme Court of Appeals. The Milk Commission enjoined the plaintiff and two other producer-distributors from selling milk without a license and selling below prices set by the commission. The court held that the act did not contravene the Virginia Constitution nor the Fourteenth Amendment of the Federal Constitution. The other case brought the Highlands Farms Dairy, Inc., and Luther W. High against the Milk Commission. The plaintiffs tried to enjoin the Milk Commission from enforcing certain orders on grounds of delegation of legislative powers, attempting to regulate interstate commerce, and the denial of due process of law. Upon losing in the Circuit Court the plaintiffs appealed to the United States Supreme Court, but both courts upheld the act and confirmed the powers of the State to fix the retail price of milk sold within the state even when obtained from outside sources.

Little is known relative to the court cases involving milk control in the states of Florida, Georgia, Louisiana, Montana, and Maine. A recent Supreme Court decision in Florida held the act constitutional. The State Supreme Court of Louisiana held certain parts of the Louisiana act unconstitutional on February 7, 1940. Those sections declared invalid had empowered the milk commission to make all necessary rules and regulations for carrying out the act and to provide penalties for violation of the rules and regulations. The Maine act is undergoing its test as to constitutionality.

### ADMINISTRATIVE PROBLEMS

It is difficult to measure objectively the administrative success of a control agency, and subjective evaluations may vary. Perhaps the number of orders and court cases can be used as a yardstick for measuring the success of the state control agencies. Even this method fails to present a true picture, because there are a great many factors complicating the enforcement agency's problems. It is apparent from the wording of the laws which ones are likely to be the most effective. The legislators enacted the more stringent laws with the full intent of alleviating the demoralized economic conditions in the milk industry. Whether the law has accomplished the established purposes depends on the complications in the milk markets and the determination exhibited by the control agency in making the members of the milk industry "toe the line." A law good on paper can be nullified by a weak enforcement agency; being politically appointed, the agency may fear political repercussions if it becomes too stringent. The location and structure of a market may make a good law less effective than that of a neighboring state operating with a mediocre law under different conditions. Factors such as quantities of interstate milk, a large number of producer-distributors, excess of surplus milk, many small distributors, and producers that are unorganized can vary the effectiveness of a law regardless of the supervision of the control agency.

Perhaps the number of markets in which a control agency is operating can be used to measure objectively the success of a milk control law. After all, the success of any law depends on the response accorded it by those concerned, particularly the public. The milk control laws are especially dependent on public support to maintain them. Paradoxically, when public hearings are held on milk control matters, very few consumers appear in order to protect their interests.

The establishment of marketing areas is one of the major problems confronting the control agency, especially where surplus milk is prevalent and base-rating and pooling provisions are to be used. If there were no surplus milk, base-rating and pooling provisions would not be needed, and every producer's milk would be used for the purpose yielding the highest returns. Where surplus milk is a problem, those fortunate producers near the market want the market boundary line to follow their back fence so all their milk will be used for the highest class. Then they will not have to share the market with producers farther out, who when admitted to the market, add to the surplus. In recent hearings on the Portland, Oregon, metropolitan milk market, several groups argued against the extension of the Portland milkshed. This was done to prevent those producers nearer the market from losing their



remunerative advantage gained by restricting the milkshed, thereby avoiding any increase in surplus milk. The Oregon Milk Board is not the only control agency that has been confronted with this problem; no doubt the majority of the other agencies are faced with propositions by various groups either to extend or limit the milkshed of a particular market. It is easy to imagine the problems confronting the authorities administering the New York metropolitan milk market, with its milkshed extending over an area of 100,000 square miles and being supplied by 60,000 individual producers. (18)

This particular problem is further aggravated where resale prices are set in a particular market without any restrictions as to who may deliver milk to that market. If the prices are too high in comparison with adjacent markets, milk will flow toward the higher prices, adding further to the surplus milk, thereby lowering the returns obtained by all producers supplying the market. Should resale prices be set lower than the adjacent milk markets and milk be allowed to flow toward the higher prices, the city or market area might find itself short of milk for fluid consumption. Besides these obvious results there are many other demoralizing reverberations occurring as a result of such milk movement.

The establishment and enforcement of resale prices is perhaps the most delicate problem that milk control agencies are required to solve. All states except Connecticut and New York have the power to set resale prices. It is interesting to note the number of states that consider the establishment and maintenance of resale prices as their biggest problem. In order to obtain complete compliance with such orders a great deal of enforcement and investigation is required. It appears as though the small dealers and producer-distributors cause the greatest trouble, but the majority of milk control agencies are agreed that as long as milk has not been definitely established as a public utility, the only way to control producer-distributors is through retail prices. The evasion of resale price schedules does not necessarily take place merely by selling milk at lower prices than those scheduled; the underhand methods of "chiseling" and various unfair trade practices are the ones most commonly used and the hardest to detect. The following quotation from a letter of May 16, 1941, received from Mr. Theodore Macklin, Associate Chief, Department of Agriculture and Markets for California, illustrates one of these underhand methods.

"As regards unfair practices, we find these most difficult to discourage. Unfair trade practices and violations of the resale orders of the Department, particularly as affecting wholesale prices to restaurants and grocery stores, are difficult to discover and punish because the person who receives the benefits is as reluctant to testify on the subject as the person who gives the inducements. Installation of free equipment, the making of 'loans,' the giving of services, money

or equipment are some of the practices we are endeavoring to discourage. During the past twelve months we have uncovered several of the more flagrant practices, a development which resulted in heavy fines upon the violators. One fine alone was in the sum of \$2,500, another in the sum of \$1,000. Through these means a sum in excess of \$10,000 was imposed as penalties on seven or eight distributors."

"Chiseling," as it influences resale prices, is even harder to detect than many of the unfair trade practices, especially where milk is not resold by butterfat content. The practice of chiseling is accomplished by the sale of milk at the prices scheduled, but by increasing the butterfat in milk the product becomes more valuable while selling without an increase in price; thus in effect a price reduction is accomplished. In order completely to control this method of evading established resale prices, expensive administration would be necessary. Compliance is most satisfactorily accomplished through imposition of heavy fines on those detected selling milk at prices other than scheduled for a certain butterfat percentage.

As has been mentioned, resale price fixing is largely dependent for its long-run existence on the public reactions to it. It is interesting to note that retail price fixing powers of state control agencies are now under attack from consumer groups in California, Florida, Massachusetts, New Jersey, Oregon, and Virginia. (10) Governor Robert A. Hurley of Connecticut in a message to the 1941 state legislature summarized the arguments against resale price fixing as follows: (13)

"I now wish to point out that as long as the present milk control law remains in effect and operates as it has in the past, Connecticut dairy farmers have little hope for sufficient increases in the sale of fluid milk to bring about any material gains in their income and there is virtually no prospect of consumers being encouraged to buy more milk."

\* \* \*

"The present policy of fixing both buying (by dealer) and selling (to consumer) prices, thus freezing dealer margins, has extended to milk dealers public utility rights without affording the dairy farmer and the consumer the protection which invariably accompanies the use of government authority in this country when public service enterprises are guaranteed the collection of definite charges."

\* \* \*

"In regulating a public utility the State does not force the public to pay a specified price, without at the same time determining that the price is fair, the profits of the company are reasonable and the service is efficient and not being duplicated."

\* \* \*

"Such a plan (minimum prices to producers only) of milk control, followed by New York and other states, as well as by the Federal Government, affords all dealers a genuine opportunity in which to develop and adopt more efficient methods and practices in the distribution and handling of milk so as to reduce costs and increase the volume of sales for their own direct benefit. Producers gain in income through the increased sales while consumers are able to obtain greater amounts of milk at the lower prices made possible by greater efficiency in distribution."

Governor Hurley's recommendations were accepted by the legislature.

The Wisconsin milk control law expires on December 31, 1941, but the legislature is working on a new milk control bill. Quoting from a letter received from the milk control division of that state, (7) "From all appearances, the new legislation if enacted at all, will prohibit consumer prices except in an emergency and will require the producer prices to be based on the value of manufacturing milk." Apparently resale prices have been under attack in the state of Wisconsin also.

The enforcement of prices to producers has not been as difficult as the policing of minimum resale prices. The majority of the control agencies proceed with enforcement by carefully auditing distributor's books to make sure that producers are receiving prices and returns properly due them. Evasion is more difficult and should a producer feel that he is being cheated he does not hesitate in notifying the officials. The principal difficulty arises in establishing satisfactory producer prices. This is especially true where producers are not under agreement to a cooperative and can dispose of their milk as they see fit. Tinley reports (23) in his observations of the operations of control agencies that "probably much of the difficulty experienced by the various boards resulted from their attempts to stabilize producer prices at a higher level than economic conditions warranted."

Several of the states provide for the establishment of producer prices based on the value of manufacturing milk, but California appears to have a more workable system than most states in this respect. The California law not only provides that the Department of Agriculture and Markets shall establish prices to producers based on manufacturing prices but also provides an automatic sliding scale that will change the producer prices when economic conditions change sufficiently. As producer prices change, resale prices change in the same ratio and in the same direction. By this method any increase in prices to consumers is passed on directly to the producer, and the distributor has to be satisfied with the same amount of spread. Whenever conditions warrant a price change, in most marketing areas the change is 5 cents per pound butterfat. Using a quart of 4 per cent milk as the basis, this change of 5 cents in producer prices results in a change of approximately  $\frac{1}{2}$  cent per quart up or down in retail prices.

Intermingled with the problem of determining equitable producer prices are the problems of equalization and producer bases. These mechanisms are almost essential wherever surplus milk is a problem. It has been the experience of most agencies that unless market-wide pooling is established in a market, continuous bickering can be expected, even when individual-dealer type pools are used. Unless all producers receive the same price for

their milk, the market will be unsettled. Producer bases are merely methods of limiting the supply of milk available for a given market area. They are used with the hope of obtaining a somewhat even yearly production of milk, because the farmers are normally interested in producing only what they can sell within their quota or base.

Another problem that confronts milk control agencies and that is more distressing in the more highly populated eastern states is the problem of interstate shipment of milk. At first such states as New York, New Jersey, Pennsylvania, and Rhode Island, which require more milk than their home producers can supply, attempted to put all producers and distributors at the same starting point by declaring that any distributor buying milk out of the state shall pay the producer in another state the same price required to be paid producers in the home state, and vice versa. This was a satisfactory barrier until adverse court decisions prevented states from controlling the interstate shipment of milk. It was almost inevitable that the only solution lay in asking Federal authorities to establish marketing agreements in cooperation with the states in those markets receiving considerable interstate milk. The state law is enacted complementary to the federal agreement to control intrastate milk and to establish resale prices where permissible. This situation confronting milk control agencies is illustrated in a statement by J. A. Rogers, Secretary of the New Jersey Milk Control Board, that "Enforcement of the New Jersey Act would be far simpler if it were not for the importation of out-of-state milk at low prices. It may be necessary for New Jersey to obtain Federal cooperation to control this situation."

The states do have power to regulate the milk once it comes to rest within their state even though it has been shipped in interstate commerce. Dealers are finding a way of circumventing this limitation in Pennsylvania by having milk shipped to market on consignment, which puts the shipment outside the control of the state milk commission. (9) Evidently New Hampshire has had the same difficulty because an amendment to the milk control law passed during the 1941 legislative session specifies that anyone receiving milk on consignment shall be classified as a distributor. (11)

A development arising from certain exemptions granted cooperatives by the milk control laws has been the establishment of "bogus" cooperatives by producer-distributors or distributors. The majority of states allow the producers' association to blend proceeds from sales and to make the necessary deductions for expenses. Several of these pseudo-cooperatives appear to have been organized in certain eastern states to benefit the organizers and not the producers. Wisconsin and New York especially have had to combat such false organizations. California has evidently encountered similar dif-

faculties with cooperatives. In the recent (1941) session of the California legislature a bill was introduced that would throw the necessary safeguards around cooperatives handling milk of their members on a cooperative basis and still preserve the effectiveness of the milk control act. The *Legislative News Letter* of May 20, 1941, explains the bill as follows :

“Recognizing the fundamental right under the laws of the State and the nation for producers to join together into cooperatives to conduct their own business, this bill would prevent the setting up of so-called ‘phony’ cooperatives to circumvent the Milk Control Act. Specifically, it requires the cooperative association to first compute and report to its producer-members that amount which each would receive under the stabilization and marketing plan; requires written monthly statements of any deductions made for reserves for working capital, necessary operating expenses, etc.; and prohibits hiding of one class of expenditure within another. It does, however, recognize the fundamental right of a cooperative to retain from marketing proceeds the amounts required in the conduct of its business. The cooperative is nothing more than a ‘producers’ enterprise,’ and as an association of producers is entitled to enjoy the same rights and privileges as any individual producer or a partnership composed of producers.” (22)

The foregoing quotation may give a clearer picture of how these “bogus” cooperatives have tried to circumvent the several milk control laws. No action has yet been taken on this measure.

Licensing, collection of fees, unfair trade practices, and examination of books and records consume the greater amount of time of the administration and enforcement officials in the several states. It is recognized that many difficulties are encountered by state milk control agencies that have not been discussed in this report, but the problems here discussed appear to be the ones that are most troublesome.

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- (10) FEDERSEN, HOWARD C., Economist, Consumers Counsel Division, Agricultural Adjustment Administration, U. S. Department of Agriculture, Washington, D. C. (March 10, 1941).
- (11) FRENCH, A. L., Secretary, New Hampshire Milk Control Board, Concord (May 23, 1941).
- (19) SMITH, CARL, Commissioner of Agriculture, State of Maine, Augusta (May 1, 1941).

Table 1. POWERS OF MILK CONTROL AGENCY

State investigational powers	Licensing powers	Bonding	Regulation of unfair competition and trade practices	Cooperation with other authorities	Mediation and arbitration	Limitations and exceptions
<p><i>Alabama.</i> Board may supervise production, production-distribution, transportation, manufacturing, storage, distribution, delivery, processing and sale of milk. Access to all books, reports, and papers at reasonable hours. May subpoena records and persons. Information required to be kept confidential except at court.</p>	<p>May revoke licenses. Producer or producer-distributors do not have to get license if milk produced is consumed on the premises; do not have to sell at prices fixed by Board; must meet health laws. Extension of business needs approval of Board. Approval depends on quantity of milk in market, effect on public interest, capability of dealer financially, etc.</p>	<p>If distributors buying milk from producers fail to pay for milk without just cause within regular periods, Board may require bond in sum twice the amount of purchases for past 15 days.</p>	<p>Specific unfair trade practices are set up in the 1939 amendment for the Board to follow: May promulgate rules and regulations; prevent false and misleading advertising; prevent misrepresentation of product; prevent sales promotion schemes. It is also the declared purpose of the act to prevent demoralizing trade practices.</p>	<p>Authorized to cooperate with other authorities to effectuate the purpose of the AAA and State Milk Control Act.</p>	<p>On application of any affected person board can mediate disputes. Decisions are to be conclusive and binding on parties involved.</p>	<p>Act applies in an area only on petition. Does not alter or supersede any existing health laws. Does not apply to producer supplying milk for a processor. Does not apply to canned milk.</p>
<p><i>California.</i> Director may make investigations and prosecute violators of the act. May administer oaths and issue subpoenas, examine books and records. Investigate all transactions between dealers and producers, etc. Amend wholesale and retail prices after public hearing. Require reports from distributors. Information to be kept confidential except at court.</p>	<p>Where marketing agreement in effect, all distributors must be licensed. Producers supplying distributors and retail stores need no license, but producers are required to be registered. Licenses may be refused, suspended, or revoked on proper hearing. Licensee has right to appeal from action of control agency.</p>	<p>\$1,000 minimum for distributors buying less than 100 gallons per day, \$2,000 less than 200, \$3,000 less than 300, and \$5,000 over 300.</p>	<p>Any stabilization and marketing plan shall have provisions for prohibiting distributors from engaging in the following unfair practices: payment, allowance or acceptance of secret rebates or refunds, etc.; giving of milk or cream, etc., except to bona fide charities; extension of special prices or services to certain customers and not to all; false or misleading advertising; purchase of fluid milk in excess of 100 gallons monthly from producer or association of producers unless a written contract has been entered into.</p>	<p>By application and approval of local control Board the director may confer or enter into agreement with any state, local, or federal authority to aid in stabilizing milk and cream distribution.</p>	<p>No provision.</p>	<p>Director authorized to order a board to desist in any action not in accordance with the Act. Educational and sales program for fluid milk shall not be detrimental to other products. Agreements may not permit development of monopolies in either production or distribution of fluid milk or cream. Producers having less than 5 cows exempt from provisions of Act.</p>
<p><i>Connecticut.</i> Administrator may investigate production, transportation, manufacturing, storage, distribution, delivery and sale of milk and milk products. Supported by power to: subpoena persons, books, etc., and administer oaths; enter any place where milk is handled; inspect all books, etc., any place within the state; may require dealers to keep records. Information obtained does not have to be kept confidential.</p>	<p>All dealers distributing or selling milk within the State (except for consumption on premises where sold) must be licensed and license plates are provided. Must comply with state sanitary requirements. Licenses may be refused, suspended, or revoked after due notice and public hearing for unfair dealings, inability to perform duties, failure to file bond or failure to make payment for milk.</p>	<p>May require bonding of licensee if he fails to pay for milk delivered within two months. The bond is double the value of the milk purchased the preceding month.</p>	<p>Elimination of unfair and demoralizing trade practices is one of the methods by which the purposes of the act are to be achieved. Specific powers are given to prevent such practices from reducing the price below the minimum established. Administrator has power to define unfair trade practices after public hearing.</p>	<p>In order to secure uniform milk control the administrator shall confer and cooperate with the legally constituted authorities of the United States and other states subject to required federal approval.</p>	<p>Controversies between dealers, producers, and consumers may be investigated on complaint. Findings are binding and final by agreement of the parties in advance of the hearing.</p>	<p>Shall not affect any contract between a non-resident milk dealer and a resident milk producer or between a resident dealer and non-resident producer. Nothing in the act shall relieve other state officials from their statutory duties with respect to the dairy industry, nor alter other laws or requirements as to milk. Dealers selling less than 10 quarts daily are exempt from making reports to the administrator.</p>



*Florida.* Investigate as emergency permits and regulate as emergency requires all matters pertaining to production, manufacture, storage, transportation, disposal, distribution, and sale of milk and milk products in any market set up in Florida; subpoena dealers and records; administer oaths. Any member of Board or employee designated may enter at all reasonable hours all places where milk is handled. Inspect all records and reports. Shall keep all information confidential except as required to perform duties of Act.

*Georgia.* For purpose of enforcing the act, the Board, through director or authorized agent, shall have access to records and entrance at all reasonable hours where milk is handled. Issue subpoenas and administer oaths. Information obtained to be kept confidential.

*Indiana.* Board or its agent may investigate production, transportation, storage, distribution and sale of milk in the state. May administer oaths and issue subpoenas; inspect pertinent books and records. Information to be kept confidential except in a court case. To have access at all reasonable hours to places where milk is handled.

All milk dealers in the state. Before license is granted, dealer must show board a certificate of health from city, county, or state. If health certificate is revoked, board shall suspend license. Where no law exists, dealer must show certificate from inspector under Milk Products Law that he complied with standards of U. S. Public Health Service Ordinance. Board may decline to grant, suspend, or revoke a license or permit because: (a) dealer has rejected milk without reasonable cause, (b) failed to make payment, and (c) failed to keep records and committed act injurious to public.

Milk dealer, producer, producer-distributor, and store shall obtain a license and must satisfy board that he is capable of performing his duties. Health certificate, if required in community, must accompany application. Board may suspend or revoke the license of any distributor who rejects milk without reasonable cause.

All dealers within the state and distributing brokers. May suspend or revoke a license on: (1) failure to make prompt payment for milk to producers; (2) violation of sanitary requirements; (3) unsatisfactory evidence of financial responsibility.

No provision.

Surety bond by distributor buying from producer of not less than \$2,000 nor more than \$10,000. May accept cash deposited with bank or trust company.

Dealer must submit a bond or financial statement indicating that he can pay for a 60-day supply of milk. Exception: cooperative selling to a milk dealer.

No specific mention of trade practices that are unfair, but it is declared unlawful to buy or sell milk below prices set by Board or at prices set by rebates, free service, advertising allowance or other services are offered or given. May establish reasonable rules or regulations for fair trade competition.

It is unlawful to buy or sell below prices set by board or to grant rebates, free services, etc.

Establishment of reasonable trade practices is provided for, although the power to prohibit them arises from the declared purpose of the act.

Board vested with authority to confer with legally constituted authorities of other states of the U. S. with respect to uniform milk control subject to such Federal approval as may be required by law.

In order to secure uniform system of milk control, Board can confer and cooperate with other state officials and United States officials, including Secretary of Agriculture, in effectuation of purposes of AAA.

Power to confer and cooperate with other states and United States in order to secure a uniform system of milk control and with health authorities as to sanitary regulation.

May act as arbitrator and mediator between or among dealers and producers but not mandatory.

No provision.

To act as mediator or arbitrator in any controversy between or among dealers and producers.

Nothing in act to abrogate or conflict with any public health law or sanitary law. Board not to regulate a natural marketing area except upon petition from a group of representative producers who petition the Board. Board can not prevent milk being given to charities. Any producer milking 3 cows or less shall not have to pay license fee but shall come under the price provisions.

(1) Limit operation of act only where election has been held.  
(2) Licenses required shall be in addition to any or all other licenses required by law.  
(3) Shall not conflict or repeal or alter any existing law regulating sanitation in production and distribution of milk or milk products.  
(4) Nothing in this act shall apply to any producer not having more than six cows from which he is selling milk.

(1) Required number and volume of distributors to petition the Board to act in an area.  
(2) Shall not prevent sale of raw milk otherwise complying with the act.  
(3) Act shall not alter any other requirements or laws as to health provisions.  
(4) Cooperatives shall not be prevented from making collective sales or blending the net proceeds.  
(5) Surplus milk may be sold by a licensed dealer to an unlicensed dealer for manufacturing purposes.

Table 1. POWERS OF MILK CONTROL AGENCY—(Continued)

State investigational powers	Licensing powers	Bonding	Regulation of unfair competition and trade practices	Cooperation with other authorities	Mediation and arbitration	Limitations and exceptions
<i>Louisiana.</i> Members of Commission or its agents or employees shall have access to any dairy, creamery, or any place where milk is handled or sold.	No provision.	No mention but Commission had tried to bond dealers. A separate bonding act was approved July 2, 1940.	No provision.	No provision.	No provision.	Act shall not be held to repeal any authority or power vested by law in the State Board of hotel or restaurant (except with U. S. Public Health Service Milk Ordinance.
<i>Maine.</i> Conduct hearings, subpoena and examine under oath records, books, and accounts. May enter at all reasonable hours all places where milk is sold or distributed.	All dealers and producer-dealers must be licensed—except persons producing and selling milk not in excess of 10 quarts daily on his premises shall be required to be licensed. May decline, suspend, or revoke a license after notice and hearing.	No provision.	No method or device shall be lawful whereby milk is bought or sold at prices less than scheduled minimum whether by discount, rebate, free service, etc.	No provision.	May act as arbitrator or mediator to settle any controversy among or between producers, dealers, producer-dealers, and consumers.	(1) Board shall not have power to nullify or amend any existing sanitary regulations. (2) Producer who sells on his own premises not exceeding 10 quarts daily shall not have to pay fees or licenses.
<i>Massachusetts.</i> Board has broad powers of investigation. May investigate and regulate market production zones, production, manufacture, processing, storage, transportation, disposal, distribution, and sale of milk and milk products; hold hearings, subpoena witnesses, inspect records. May enter (at all reasonable hours) any place where milk is handled. Information to be kept confidential.	Each milk dealer (certain exceptions) must be licensed and display license in his place of business. Board may suspend, revoke, or grant a conditional or limited license to an applicant if certain provisions are not met: (1) accept and pay for milk; (2) act to reduce price so as to affect supply; (3) party to a combination to fix or maintain prices against the act; (4) fail to keep records; (5) make false statements; (6) various other acts not in good faith with the act.	Under a separate act. Department of Agriculture secures bond or other security from dealers who buy milk or cream from producers.	Board is charged with establishing reasonable trade practices. Certain acts are unlawful and may result in revocation of the license.	May confer and enter into agreements with authorities of other states and United States with respect to uniform milk control.	Board authorized to arbitrate any controversy or issue among or between producers or milk dealers.	Act shall not affect any public health rule or regulation. Exempted as milk dealers: (a) hotel or restaurant (except soda fountain) which sells milk to be consumed on the premises and does not purchase milk from producers; (b) one who delivers raw milk only to a milk dealer. Producer-distributor selling less than 50 quarts daily does not have to pay assessment fee. Resale prices may be established only on petition of 25 per cent of producers in a market. State Act shall not conflict with a Federal agreement where one is in effect.
<i>Montana.</i> May enter at all reasonable hours all places where milk is produced, handled, etc.; issue subpoenas and administer oaths. Require all persons holding licenses to file reports with the Board as to production, sale, etc. of milk. Information to be kept confidential.	Producers, producer-distributors, and distributors must get licenses. May decline, suspend, or revoke a license upon due cause and public hearing for: violation of Act, failure to make required statements or pay fees.	No provision.	Board may adopt and enforce all rules and orders necessary to carry out the provisions of this act. Shall have power to make and formulate, in any established market, reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act within that market.	In order to secure uniform milk control, the Board shall confer and cooperate with authorities of other states and Secretary of Agriculture of the United States.	May act as mediator or arbitrator to settle any controversy or issue among or between dealers and producers and consumers.	Nothing in act shall abrogate or affect public health laws. Licenses required shall be in addition to any other license required in the state.

*New Hampshire.* Conduct hearings; subpoena producers, distributors and others; inspect books and accounts. Member of Board or its representative may enter and examine (at all reasonable hours) all places where milk is handled.

*New Jersey.* Board empowered to investigate the production, importation, sale for manufacture, storage, transportation, disposal, distribution and sale of milk in the state. May issue subpoenas for persons, papers, and records. May require records from distributors. No mention made of keeping information obtained confidential.

*New York.* Commissioner of Department of Agriculture and Markets has power to supervise and regulate the milk industry and investigate all matters as to production and handling of milk. May: (1) subpoena persons, records, and reports; (2) enter any place where milk is handled; (3) administer oaths; (4) require records and reports to be kept. No provision that the information received shall be kept confidential.

Only distributors in markets designated by the Board are required to be licensed. License fees vary from \$2 to \$10 according to quantity of milk sold. Board does not have to hold a hearing upon refusing a license. May suspend or revoke a license on due notice and public hearing.

Every dealer must be licensed. Board may decline, suspend, or revoke a license because of: (1) failure to pay for milk purchased; (2) commitment of an act injurious to the trade; (3) failure to keep records; (4) commitment of an act against health laws; (5) making false statements.

License milk dealers include brokers and cooperatives. Exempt: hotels, restaurants, and dealers selling only to distributors. Sales of milk outside the state not included in determining license fee nor milk used for manufacturing products. May decline to grant, suspend, or revoke a license for any one of several reasons.

Under separate law not in the Act. Persons buying milk or cream within the State shall be bonded or else make satisfactory showing as to real estate ownership in the state.

Under a separate act. Bond dealers, sub-dealers, and processors.

Dealers buying milk from producers for resale or manufacturing must be bonded for not less than \$2,000, based on amount of milk handled. If can satisfy as to financial position, may be exempt. (Only natural persons or a domestic corporation).

No mention of unfair trade practices yet a purpose of the Act is to maintain fair and lawful trade practices. Provide against unfair trade practices in the agreements.

Board authorized to control or prevent unfair, unjust, destructive, and demoralizing practices.

Nothing specifically mentioned as to prohibiting unfair competition and trade practices. Certain acts, though, are prohibited or can result in revocation of the license.

Board is authorized to confer and agree with legally constituted similar boards of other states or with agencies of the Federal Government for purpose of assuring an adequate milk supply for the State.

Board may enter into agreements with state, county, municipal, and Federal Governments. Agreements must be ratified by a majority of the board before becoming effective.

Authorized to confer with other authorities with respect to achieving uniform milk control within the state or between states and with Federal Government. The act is not operative in New York City unless in cooperation with Federal authorities.

Board shall secure the cooperation of those engaged in the industry to maintain fair and lawful trade practices. No other mention of mediation and arbitration.

May mediate or arbitrate issues among and between producers, milk dealers, and consumers.

Commissioner of Department of Agriculture and Markets to act as mediator between producers and dealers.

(1) Shall supplement but not be in lieu of existing laws relating to transportation, inspection, and testing of milk, and laws relating to public health.  
(2) Cooperatives shall not be prohibited from blending and distributing their proceeds.  
(3) Exempt from definition of distributor: (a) one who sells milk for consumption on premises, (b) producer who sells milk to distributor only.

(1) Nothing in the act authorizes board to establish or enforce sanitary regulations, or conflict with health laws in effect.  
(2) Milk utilized for manufacturing purposes shall not be used to determine the license fee.  
(3) Sales by a milk dealer of milk bought in or out of the state and sold out of the state not included in license determination.  
(4) If municipality revokes or suspends a license of a dealer, the board shall automatically suspend its license until dealer allowed to operate by the city.

(1) Act applies to New York City but shall not alter its sanitary requirements.  
(2) No health officer of any county, city, or village shall approve an additional milk supply without first satisfying the Commission that the added supply is necessary for the city and will not deprive another city of its supply.  
(3) Milk utilized in manufactured products not to be used in determining license fee.

Table 1. POWERS OF MILK CONTROL AGENCY—(Continued)

State investigational powers	Licensing powers	Bonding	Regulation of unfair competition and trade practices	Cooperation with other authorities	Mediation and arbitration	Limitations and exceptions
<p><i>Oregon.</i> Board may investigate production, manufacture, storage, transportation, distribution, and sale of milk. Power of Board to investigate shall be with Oregon State College. Board may issue subpoenas and administer oaths; examine records and accounts of dealers; take deposition of witnesses within or without the state.</p>	<p>Licensing of dealers is mandatory, except Board has discretionary powers to license in markets of 15,000 population or less. May specify in what market the license applies. Board may decline to grant, suspend, or revoke license, upon due notice and opportunity to be heard, for: (1) failure to pay for milk; (2) committed an act injurious to public health; (3) carried on unfair trade practices; (4) failed to keep records, etc.</p>	<p>Bonding not required.</p>	<p>Board shall have power to prevent unfair methods of competition and unfair trade practices. The act was enacted to prevent unhealthful, unfair, unjust, destructive, and demoralizing trade practices.</p>	<p>Board may confer, cooperate, and enter into pacts with other state and Federal authorities with a view of obtaining a more uniform system of milk control.</p>	<p>May mediate or arbitrate any controversial measures among or between producers and dealers.</p>	<p>(1) Definition of milk prevents the Board from fixing prices of factory milk.  (2) Producer means person producing milk within Oregon.  (3) Denies right of Board (formerly exercised) to issue state-wide orders with respect to prices, pooling, and producer quotas; and requires that each market area and production area shall include that territory in which conditions are similar.  (4) Act shall not conflict with any other law as to health and sanitation.  (5) Producer-distributor with one cow does not have to be licensed or pay poundage fee.</p>
<p><i>Pennsylvania.</i> Board or an employee designated for the purpose is vested with the power to investigate all matters pertaining to the milk industry and establish reasonable trade practices, systems of production control, and marketing area enforcement committees. May issue subpoenas of persons, papers, and reports; enter premises handling milk; administer oaths; and inspect books, papers, or reports. Board may require dealers to keep records and reports. Information to be kept confidential.</p>	<p>Milk dealers are licensed. Without a license, a dealer shall not buy for purpose of storage, processing, manufacturing, distribution, or sale of milk within or without the state. Exemptions from licenses: (1) dealers handling less than 1,500 pounds in any month; (2) dealers selling in a community of less than 1,000 population; (3) stores. May decline to grant, suspend, or revoke a license for various causes, i.e., failure to pay, rejected milk, etc. Commission issues permits for weighing or measuring to each milk dealer, fee \$5 annually. Butterfat tester must be certified by the Commission, fee \$3 annually.</p>	<p>Applicant for license must file a personal bond approved by the board. If personal bond is not adequate, must post a surety or collateral bond of \$100,000 or less. Cooperatives do not have to file a bond. Sub-dealer pays \$300 bond for every route owned or operated.</p>	<p>The board is specifically vested with power to investigate and regulate trade practices.</p>	<p>Board is authorized to confer and cooperate with other agencies with respect to uniform control within the state and between states and Federal Government.</p>	<p>Not specifically provided in the Act.</p>	<p>(1) No price fixing for milk sold to consumers for consumption on the premises.  (2) Stores exempted from license if selling milk all of which is bought from a licensed dealer.  (3) Act shall not apply to milk shipped into the state in tanks and used only for manufacturing purposes.  (4) Act shall not conflict with any law relating to public health.  (5) In some cases, board must have approval of Governor before acting.</p>

*Rhode Island.* Board vested with powers to investigate production, importation, storage, transportation, disposal, distribution, and sale of milk as may be necessary to carry out the provisions of this act. May subpoena any person who would aid in administration of the act; compel production of books, records, and accounts; administer oaths; enter at all reasonable times places where milk is produced or handled. Information does not have to be kept confidential.

*Vermont.* Ample powers granted the board to investigate all phases of the milk industry. Board may conduct hearings, subpoena persons and records, and administer oaths. Board or representative may enter (at all reasonable hours) all places where milk is produced, handled, distributed, or sold.

*Virginia.* Commission empowered to investigate all matters pertaining to the production, transportation and sale of milk in Virginia. May subpoena persons, reports, and records. May enter all places where milk is handled. All information obtained must be kept confidential.

*Wisconsin.* Duty of Department of Agriculture and Markets is to determine whether "economic unbalance or unemployment" continues to exist or no longer exists in the milk industry. May: enter (within reasonable hours) any premises handling milk; conduct hearings, administer oaths, subpoena persons and records.

Mandatory that every dealer shall have a license except: (1) where milk is consumed on premises; (2) store obtaining all its milk from licensed dealers. May suspend or revoke a license on 13 listed grounds. Act provides that no license shall be issued to a foreign corporation unless it is qualified to do business in the state as by law.

Licensing of dealers confined to markets designated as marketing areas by the board. Producers selling milk for consumption must be licensed except those who sell in other states, or to creameries, or sell less than 10 quarts daily. Board may decline a license after opportunity to be heard, and may suspend or revoke a license after due notice and public hearing.

License all distributors in any designated market. Board may suspend or revoke a license after due notice and public hearing.

All dealers require a license except: (1) producers distributing less than ten quarts daily; (2) a dealer operating a store. License fee is retained by the department whether license is issued or not. License may be denied, suspended, or revoked after notice and hearing.

No provision.

Not required.

No bonding specifications, but in two of twelve markets, board has required bonding by official regulation.

Department may at any time require a licensee to file a surety bond.

Not specifically mentioned. May decline to grant a license or may revoke a license if such practices are carried out. Unlawful to buy or sell below prices set by Board, whether by discounts, rebate, free services, etc.

No mention in the law—but the board shall procure the cooperation of those engaged in the milk industry to maintain fair and lawful trade practices through its licensing power. May suspend or revoke a license for carrying on such practices. Anyone intimidating producer, causing him to withdraw from producers' association is guilty of unfair discrimination.

No specific powers in the law, but powers appear implicit in enforcing the act. Elimination of such practices is one of the law's objectives.

Department is empowered to eliminate such methods and practices in connection with the distribution of regulated milk. Have power to enjoin a person from employing practices that are detrimental and tend to cause needless waste and duplication.

Authorized to confer and cooperate with other agencies, especially with Federal Government, so as to bring about uniform milk control.

Board is authorized to confer and cooperate with other agencies to bring about a uniformity in regulations and assure an adequate and proper milk supply in Vermont.

With a view of securing uniformity of milk control, commission has power to confer and cooperate with other agencies.

Contains no provision conferring authority upon the department to cooperate with other agencies.

Not specifically mentioned, but board shall endeavor to effect amicable reconciliation of differences between various milk interests.

Not mentioned. But mandatory that the board procure the cooperation of those engaged in the industry to maintain fair and lawful trade practices.

Empowered to act as mediator or arbitrator in any controversial issue among or between producers and distributors.

Not specified or inferred.

Act shall in no way conflict with other laws relating to milk. Exceptions as to licensing powers: (1) stores obtaining milk from licensed dealers; (2) where sold for consumption on premises; (3) milk used or sold in manufactured form shall not be included in determining license fees. Board may not prevent giving of milk for charity.

Act shall supplement but not supplant existing laws as to health regulations and testing and inspecting milk. Excluded from price fixing is milk that goes for charity. Those whose milk is sold on premises for consumption and producer who sells only to a distributor are not dealers. Provisions of the act shall not interfere with activities of cooperatives.

Under certain conditions, the commission shall be required to withdraw from a market. Law shall not conflict with existing laws relating to public health.

Exercise of authority shall apply only to "regulated milk" in any "regulated milk market." Act shall not limit the power of any municipality to license or to regulate the distribution in any manner not consistent with this act.

Table 2. ADMINISTRATIVE ORGANIZATION

State, date of approval	Law expires	Type of agency, membership, salaries	Source of financing	General powers of agency	Products to be controlled
ALABAMA 7/9/35 3/20/39 9/21/39 (1) (2)	6/30/39 Permanent Permanent	Milk Control Board. No local committees provided for but may function. 5 members appointed and removable by Governor: 1 wholesale producer, 1 producer-distributor, 1 distributor, 1 consumer, 1 member not in milk business. Appoint an executive secretary to be administrator. \$7.50 a day on official duty plus subsistence and traveling expenses.	Yearly fees: store \$2.50; producer (2 cows or more) 75 cents each; distributor and processor on amount handled. (Varies \$10 for 50 gallons or less up to \$400 for 3,000 gallons or more a day); producer-distributor license fee as producer and fee on amount he buys as distributor.	Cannot exercise powers until: (1) set up milksheds as natural marketing areas. (2) Petitioned by majority of producers, producer-distributors and distributors in milkshed—must have health permit where laws are in effect. Board not required to vacate once established but may withdraw from a milkshed whenever it desires.	Milk—sold as milk, cream, butter-milk, and skimmed milk sold or intended to be sold as such for human food—excludes milk for any other purpose.
CALIFORNIA (Stabilization and Marketing Act) 6/1/35 4/21/37 Resale 6/17/37 1939 (1)	Permanent	Director of Agriculture aided by local control boards. Local boards consist of 7 members: 3 distributors; 1 producer-distributor; 2 retail storekeepers; 1 consumer. 2-year term. Also provisions for local control board consisting of 7 producers to aid director in each market. \$5 a day and mileage for meetings for each member of the local control board.	Revenue to be used for administrative expense, educational and sales stimulation. Distributors pay assessment fee to director which they deduct from producer payments (2 mills per pound milk fat). Distributors who do not buy or receive milk fat shall pay 7 mills for each 10 gallons of fluid milk sold. License fees from distributors: less than 50 gallons a day \$3, graduated up to \$50 for 500 gallons or more per day. Producer with less than 5 cows is exempt from any provisions of the Act.	Milk or cream: plan conditioned on (1) 65 per cent or more by number and volume of producers in the marketing area, (2) after plan is formulated by Director, public hearings on plan are held. Termination: (1) fluid milk or cream—55 per cent of producers request by number or volume. (2) Director may end agreement after notice and public hearing.	Fluid milk—all milk produced in conformity with quality standards prescribed by the Agricultural Code for "market milk"—classes established. Fluid cream—all cream from fluid milk or whole milk purchased for derivation of cream.
CONNECTICUT 5/24/33 5/29/35 1937 1939 (1)	Permanent	1933: Milk Control Board. 1935: Milk Administrator with 2 deputies engaged in milk production. Special services performed by state departments. Administrator selected by governor for 2 years with advice and consent of General Assembly. Administrator must have been a producer 2 years before appointment to office. Administrator—\$5,000.	Revenue obtained from license fees from dealer graduated as to volume of business. Administrative costs must be kept within amount collected from license fees.	(1) May initiate investigations. (2) Mandatory to license all dealers selling milk within the state. (3) Require reports from dealers.	Fluid milk or cream.
FLORIDA 6/12/33 5/29/35 6/9/37 5/31/39 (1) (2)	6/30/35 6/30/37 6/30/39 Permanent	Board within Department of Agriculture. Technical service to be given by Department of Agriculture as far as possible. 7 members: Commissioner of Agriculture, State Health Officer, Director of Milk Control Board, 1 citizen not connected with milk industry, 1 producer, 1 producer-distributor, 1 distributor. Appointed and removable by Governor. Each member must put up a bond. 4-year term. No pay for members but get traveling expenses. Director to receive not more than \$3,600.	License fees. Distributor \$5 plus \$5 for each truck or car operated over 1, applies to producer-distributors and sub-dealers. Producer and producer-distributor must get annual permits to operate. May require them to keep records. Tax placed on distributors of 1/10 of 1 cent on each gallon of milk distributed each month. All route salesmen, solicitors and milk truck drivers pay license of \$1. Stores obtain a permit only to buy and sell milk. Expenditures not to exceed revenues.	Board—instrumentality of the state. To supervise and regulate entire milk industry of the state. Prohibit using, buying, purchasing, selling, offering for sale, disposing of or trafficking in any milk and/or cream bottle, can or container by anyone other than the owner or his agent. Board may require licensees to keep records. Commission shall withdraw exercise of its powers in any market upon petition by 51 per cent in number and volume of producers. Market—to contain not less than 1,000 population.	Milk—liquid milk and/or cream fresh, sour, or storage; and/or concentrated whole milk except in hermetically sealed cans originally obtained from the complete milking of one or more healthy cows.

<p>GEORGIA 3/30/37 1939 (1)</p>	<p>8/15/41 8/15/41</p>	<p>Board of 7 members appointed and removed by Governor. Member collecting money must be bonded. 2 producers, 2 producer-distributors (1 from cooperative), 1 distributor, 1 store licensee, 1 consumer. Director appointed by Governor; director may appoint assistants. \$6 a day while on duty, subsistence and traveling expenses. Director's pay not to exceed \$4,000.</p>	<p>License fees: store \$2.50. Producer not in excess of 2 cents per 100 pounds produced. Producer-distributor not in excess of 2 cents per 100 pounds produced or received from others. Distributor not in excess of 2 cents per 100 pounds received. Producers, producer-distributors and distributors pay monthly on milk received or handled in previous month. No fee required for milk not consumed in the designated milkshed. Money goes to Milk Control Fund.</p>	<p>Board may designate milksheds and hold election in milksheds to determine if provisions of act apply in the shed. Each producer, producer-distributor and distributor having a municipal or county permit to sell milk in milkshed has 1 vote. Board to enforce provisions of the Act, supervise and regulate production, transportation, manufacturing, storage, distribution, delivery and sale of milk; to administer oaths, subpoenas, etc. Board may issue orders and rules and must post same in Director's office and publish in milkshed. May require records to be kept and turn in reports.</p>	<p>Milk—includes raw milk, pasteurized milk, cream, buttermilk, flavored milk, ice cream mix, and re-conditioned milk. Does not include butter, cheese, etc.</p>
<p>INDIANA 3/12/35 3/11/37 2/28/39 (1) (2)</p>	<p>7/1/37 7/1/39 7/1/41</p>	<p>Milk Control Board. Local milk committees selected by Board from producers and distributors aid in enforcement and promulgation of Act. 5 members appointed and removable by governor. Commissioner of Agriculture is Chairman, 2 distributors, 2 producers. May employ assistants. Not over \$15 per day except Commissioner of Agriculture.</p>	<p>Annual license fees: distributors \$35 for less than 1,000 pounds per day up to \$825 for 60,000 to 75,000 pounds per day; producer-distributors \$2 less than 3 dairy cows, over 3 \$1 for each multiple of 3; distributing broker \$15. Fees go into general fund of state. Marketing services rendered by local committee financed by deductions from producer payments. Legislature appropriated \$26,500 for 1939-1940.</p>	<p>Exercise powers on own initiative, except wholesale and resale prices to be set in an emergency through request by: 30 per cent of distributors handling 70 per cent of volume, or 70 per cent of distributors handling 30 per cent of volume. If board determines emergency exists in a market shall publish notice and hold hearings to establish a market area.</p>	<p>Milk sold as fluid milk and also cream, buttermilk, and skimmed milk sold, or intended to be sold as such for human food, including milk sold or manufactured as surplus milk.</p>
<p>69 LOUISIANA 7/2/38 (1)</p>	<p>Permanent</p>	<p>Louisiana Milk Commission. 7 members: President of Louisiana State Board of Health, Commissioner of Agriculture and Immigration, Executive Secretary of State Livestock Sanitary Board, 4 members appointed by Governor for 4 years. 2 of 4 shall be producers. May appoint secretary. Secretary to receive not more than \$5,000. \$10 per day plus 10 cents per mile for each day on official duty for appointed members.</p>	<p>Appropriate \$25,000 yearly from General Fund of the state.</p>	<p>Make necessary rules and regulations for carrying out the purpose of the act. May appoint dairy inspector and testers. Tuberculosis tests to be made as often as deemed necessary.</p>	<p>Milk, cream, and fresh milk for fluid consumption. Shall not sell milk that has had water added to it, is wholly or partially skimmed, is not of standard quality, misrepresented milk, milk from diseased cows, milk handled, stored, etc. in unsanitary manner. Skim milk may be sold if container is plainly marked "skimmed milk."</p>
<p>MAINE 2/27/35 3/30/39 (1)</p>	<p>Permanent</p>	<p>Milk Control Board. Obtain assistance from other departments, especially Department of Agriculture. Governor with advice and consent of Senate shall appoint 2 producers, 1 producer-distributor, 1 dealer. May appoint secretary. Per diem determined by Governor, traveling expenses.</p>	<p>Amount spent for administration not to exceed amount collected from fees, etc. Each licensed dealer and producer-dealer pays \$1 yearly and not over 1 cent per 100 pounds as monthly payments based on quantity sold, for administrative needs. One-half payment may be deducted from producer payments. Any producer selling less than 10 quarts daily on his own premises is not considered a producer-distributor and is not required to pay license fees.</p>	<p>Supervise, regulate, and control the distribution and sale of milk for consumption within the state. Board may adopt, promulgate, and enforce all rules and orders necessary to carry out the provisions of this act. Board designates the markets. Provision stating the Board shall not exercise its powers in any market except upon written petition by dealers, etc., was repealed in 1939</p>	<p>Fluid milk and cream.</p>

(1) Separability Clause. If any portion of the Act is held to be invalid the remaining provisions shall not be affected.

(2) Savings Clause. None of the law's provisions shall be deemed to apply to interstate or foreign commerce except as may be permitted by the Federal Constitution and the laws of the United States.

Table 2. ADMINISTRATIVE ORGANIZATION—(Continued)

State, date of approval	Law expires	Type of agency, membership, salaries	Source of financing	General powers of agency	Products to be controlled
<b>MASSACHUSETTS</b> 7/2/34 1936 7/2/37 5/19/38 6/19/39 (1) (2)	6/30/36 6/30/38 6/30/39 6/30/41	Board of Milk Control within Department of Agriculture. 3 citizens appointed and removable by Governor with advice and consent of Council. May have an Administrator and other technicians. \$10 per diem and travel expenses.	Annual license fee of dealers not more than \$5, and by monthly assessments of not more than 2 cents per 100 pounds. Dealer may deduct $\frac{1}{2}$ of this amount from the producer's share. Producer-distributor does not have to pay volume assessment below 50 quarts but must pay license from \$2 to \$5 depending on volume handled.	Exercise powers on own initiative except in fixing resale prices—need petition to do so by 25 per cent of producers asking for minimum resale prices in a designated zone. The Board may maintain or withdraw the prices thereafter without petition.	Fluid milk, cream, and fresh, sour, or stored skimmed milk and buttermilk, irrespective of whether or not such milk is flavored.
<b>MONTANA</b> 3/6/35 3/17/39 (1) (2)	No provision Permanent	Milk Control Board of 5 members appointed and removable by Governor. Board may foster in each marketing area a local board composed of all licensees. Aid Board in determining costs, etc., for basis of price fixing and enforcing provisions of the Act. May receive up to 10 per cent of all fees collected for their services. Executive officer of Montana State Livestock Sanitary Board as chairman. 1 consumer, 1 producer, 1 producer-distributor, 1 distributor. 4 years each. Board shall select executive secretary. Must file bond. Chairman—no pay. \$5 a day plus subsistence.	Annual license fees. Producer-distributor \$1 for each 600 gallons or fraction thereof sold. Producer 50 cents per 600 gallons or fraction thereof sold. Distributor 50 cents per 600 gallons or fraction thereof sold by him. Producer-distributor or distributor who handles sweet cream but no milk shall pay \$1.	Supervise, regulate, and control fluid milk industry in Montana, including production, transportation, processing, storage, distribution, and sale of milk; investigational powers; subpoena persons and records; administer oaths; exercise powers only in markets designated or established by the Board by canvassing producers, producer-distributors, and distributors to see if majority of above in number and volume desire such a market. Board may withdraw but shall make canvass to see if desired by majority as above. If not—will not withdraw.	Milk is fluid milk and cream sold for consumption as such.
<b>NEW HAMPSHIRE</b> 1935 5/13/37 5/31/39 (1) (2)	By legislature or governor Permanent Permanent	Milk Control Board. 3 members not more than 2 from same political party. Appointed by Governor with consent of Council for period of 3 years. May employ assistants. \$7 per day and expenses for each day in service. Assistant's salary set by Governor and Council.	Appropriated \$12,000 for each year for the operation of the Board from the Treasury. All money collected from license fees and fines goes to the general revenue of the State and not to the Board. Fees vary from 2 to 200 quarts daily—above 200 quarts is \$5 extra for each 100 quarts or fraction thereof.	Exercise powers to full extent granted in the act upon its own initiative. 1937 amendment changes 1935 law by eliminating the "consent feature" (prohibited Board from acting unless petitioned by percentage of volume or number.)	Fluid milk, cream, skim milk or buttermilk, fresh, sour or stored, irrespective of whether or not such milk is flavored.
<b>NEW JERSEY</b> 5/33 4/29/35 5/27/37 5/26/39 (1) (2)	7/1/36 6/30/37 6/30/39 6/30/41	Milk Control Board. 5 citizens of the state. At least one consumer, producer and distributor must be on Board. Appointed and removable by Governor. Administration placed in hands of a secretary and his assistants. Board makes final decisions only on matters coming from the secretary. Per diem \$10 and expenses.	Annual license fees. Stores—\$1 unless milk consumed on premises. Dealer—2,500 pounds monthly pays \$2—up to 5,000,000 pounds monthly pays \$800. Subdealer—\$10. Processor selling to sub-dealer \$250. Dealer selling in another state \$25. On applying for license dealer or processor must deposit \$100 until Board determines amount of license fee.	Exercises power on own initiative in any way to effectuate the purpose of the act. The law states how the Board shall act in licensing milk dealers and establishing prices.	Milk—product of dairy animals with view to being sold for human consumption and also cream, ice cream mix, buttermilk, and skimmed milk, sold or intended to be sold as such for human food, and also flavored milk.



NEW YORK

4/10/33  
3/30/34  
4/1/35  
4/1/36

3/31/34  
4/1/35\*  
4/1/36\*  
4/1/37\*  
\*Part of Act permanent since 1934  
Permanent

Division of Milk Control with Department of Agriculture and Markets. Advisory committee of 11 to 15, selected by Commissioner. 5 members are producers or distributors. Director of division appointed by Commissioner of Agriculture and Markets. Regular salary.

Direct appropriations of the state—\$220,000 in 1937. State receives license fees. Range from \$25 for a volume up to 4,000 pounds daily to \$5,000 for a volume of 1,000,000 pounds or more daily. Dealers and cooperatives not operating a milk plant pay \$25 fee. Distributing broker pays \$25 fee.

Department has control of sale and production of milk in the state and fixes prices to producers. Commission issues orders. Commission not limited by need of requests for action. Quotas and equalization of prices not permissible unless established in whole New York milkshed and order for equalization of prices must be approved by majority vote of advisory committee.

Liquid milk and/or cream, fresh, sour, or storage; and/or condensed or concentrated whole milk, except in hermetically sealed cans. Includes butter.

5/19/37  
1939  
(1)  
(2)

OREGON

12/9/33  
11/1/35  
2/24/39  
(1)

Permanent

Milk Control Board. Director of State Department of Agriculture, or representative, to be executive secretary of the board. 3 members, one from each congressional district. Appointed and removable by Governor. No member to be connected in any way with the fluid milk business. \$10 per diem and expenses. Per diem not to exceed \$150 in any month. No pay for executive secretary. Board appoints administrator. Salary: \$4,200.

Annual license fee of \$1 by milk dealers and stores. Monthly poundage assessment by milk dealers only. Original assessment ¼ cent per pound butterfat handled by milk dealer. Changed in 1935 to ½ cent per pound.

Board may act on own motion and initiative—empowered to supervise, regulate and control the production and handling of milk as defined and to the full extent as provided in the statute.

Fluid milk and sweet cream sold for human consumption in the fluid form.

PENNSYLVANIA

1/2/34  
4/30/35  
4/28/37  
(1)  
(2)

4/30/35  
4/30/37  
Permanent

Milk Control Board. 3 citizens, resident and voters of Pennsylvania. Nominated by Senate and with its consent appointed by the Governor. Board may select a secretary and assistant. \$6,500 to chairman. \$6,000 to others. Member shall hold no other office.

Money from license fees, penalties goes to Treasury into Milk Control Fund for expenses of Board. Fees: dealer who handles not over 20 pounds daily pays \$1 and over 1,000,000 pounds daily \$5,000. Sub-dealer—\$15 for each route owned or operated. Appropriated \$250,000 from June 31, 1935 to April 30, 1937.

Board may act on its own initiative and without petition on part of producers, distributors or others. In certain specific instances (mainly price fixing) the Board has to have the approval of the Governor.

Fluid milk and cream, fresh, sour or storage, skimmed milk, buttermilk, ice cream mix, condensed or concentrated whole or skim milk, except in hermetically sealed cans or containers.

RHODE ISLAND

5/5/34  
3/31/36  
1937  
1939  
(1)  
(2)

3/31/36  
Permanent  
Permanent  
Permanent

Board of Milk Control. Technical and legal assistance to be engaged from state departments. Independent of Department of Agriculture. 3 members on Board: 1 producer, 1 consumer, 1 distributor. Not more than \$15 per day.

Cost of administration not to exceed the aggregate amount of fees collected yearly. License fees from licensed distributors of \$1. Volume monthly assessments not to exceed 2 cents per 100 pounds from dealers based on monthly total quality of milk sold as fluid milk or cream.

Board acts on its own initiative in all matters over which it has jurisdiction. Before minimum prices to producers are set Board must be petitioned by 51 per cent of producers within marketing area. Can terminate at request of 51 per cent of producers.

Liquid milk and/or cream, fresh, sour, or storage; skimmed milk and buttermilk, whether or not flavored. Cream is anything over 6 per cent butterfat. (Heavy cream—contains not less than 38 per cent butterfat.)

VERMONT

7/19/35  
3/26/37  
2/17/39  
(1)  
(2)

By legislature or Governor.  
Permanent  
Permanent

Milk Control Board. May employ necessary assistants. 3 members: Commissioner of Agriculture, Commissioner of Public Welfare, citizen. Appointed biennially by Governor. No pay to Commissioners. Citizen pay determined by Governor.

All expenses must be covered by receipts. Annual license fees from dealers and producers vary from \$2 to \$10 according to volume handled. 10 to 20 quarts \$2, over 500 quarts \$10. Under 1933 act producers paid volume assessments. Producers producing less than 10 quarts daily not required to be licensed.

Board operates under own initiative and has power to supervise, regulate, and control distribution and sale of milk, subject to certain limitations.

Fluid milk, cream, skim milk, or buttermilk, fresh, sour, or storage, whether flavored or not.

(1) Separability Clause. If any portion of the Act is held to be invalid the remaining provisions shall not be affected.

(2) Savings Clause. None of the law's provisions shall be deemed to apply to interstate or foreign commerce except as may be permitted by the Federal Constitution and the laws of the United States.

Table 2. ADMINISTRATIVE ORGANIZATION—(Continued)

State, date of approval	Law expires	Type of agency, membership, salaries	Source of financing	General powers of agency	Products to be controlled
VIRGINIA 3/29/34 3/27/40 (1) (2)	By legislature or Governor.	State Milk Commission. Local Milk Board of 5 members subordinate to Milk Commission in each market. Two producer representatives, 2 distributor representatives, 1 consumer representative appointed by Commission is chairman. Three members of state commission appointed and removable by Governor: producer, producer-distributor, 1 member in no way connected with milk business. Secretary appointed by Commission as administrator. Technical services performed by Department of Agriculture, and Virginia Experiment Station and Extension Service. Per diem to members of only \$10.	Assessments on local milk boards not over 2 cents per 100 pounds. Local board to meet expenses and assessment by commission may levy assessment not to exceed 4 cents per 100 pounds of milk or cream converted to milk of 4 per cent butterfat; $\frac{1}{2}$ borne by producer and $\frac{1}{2}$ by distributors handling such milk or cream. Have no license fees.	Require hearing to precede exercise of power in any market, or withdrawal after regulations have been in effect. Hearings called by: milk commission, producers' association, or producers if no association, distributors if distributing major part of milk consumed in the market. Commission must withdraw upon written application of majority of producers and distributors (as to volume) acting jointly.	Clean milk from healthy, properly cared for cows, prepared with a view of selling it as fluid milk, cream, buttermilk, and skim milk. Excludes milk sold or intended for sale for any other purpose.
WISCONSIN 7/2/33 Spring 1935 Spring 1937 10/13/39 (1)	6/30/37 On or before 12/31/39 On or before 12/31/41	Department of Agriculture and Markets. Personnel of Department of Agriculture and Markets. Regular salary.	State Appropriation Funds. Cost of administering is met by a deduction by each dealer from the price to his producers, and not to exceed 1 cent per 100 pounds of fluid distribution. Have annual license fees for dealers of \$10.	On its own initiative or on petition in writing the department can inquire into and determine regulated milk markets and prescribe such terms and conditions for the purchasing, receiving, and handling or selling of regulated milk in any such market as it shall find necessary to eliminate unfair methods of competition or unfair trade practices.	"Regulated milk," fluid milk, whole or skimmed, and fluid cream, buttermilk, and cottage cheese, and any other milk received by any dealer.

(1) Separability Clause. If any portion of the Act is held to be invalid the remaining provisions shall not be affected.

(2) Savings Clause. None of the law's provisions shall be deemed to apply to interstate or foreign commerce except as may be permitted by the Federal Constitution and the laws of the United States.