

## Agriculture by Cynthia Parsons

### Consumer movement hits dairy industry

*The federal marketing order program guaranteeing the nation's milk supply, may be "deregulated."*

Federal marketing orders, designed to create price structures and marketing structures for the U.S. dairy industry, were set up in 1937 to ensure a supply of fresh whole milk to every city and rural area in the country. This government-administered program has guaranteed both the quality and quantity of milk available to the U.S. population—something essential for so perishable a product—and dairy farmers' ability to maintain and expand production.

Now, the courts are opening this program up to challenges from the "consumer movement." A Washington, D.C. appellate court ruled Jan. 21 that individual consumers have the standing to challenge the federal market order provisions. The decision reverses a 1972 ruling which dismissed a consumer suit on the grounds that Congress had actually intended to preclude judicial review of individual consumer challenges to market orders when the program was established, to protect the quality of the nation's milk supply from "free market" sabotage or narrow interest groups.

The current challenge to the marketing orders program was brought to court in 1979, when three individuals and a milk handler associated with the Washington, D.C.-based Community Nutrition Institute (CNI) requested that the USDA reclassify reconstituted milk under market orders. Reconstituted milk is not currently sold in the United States, but could be a valuable food product for industrial use or for export.

The Consumer Nutrition Institute is very explicit about the intention of its challenge to the marketing orders

program. The issue is not the right to produce and sell reconstituted milk; it is essentially to "deregulate" the U.S. dairy industry. If reconstituted milk, which does not require refrigeration, could be sold throughout the country, a CNI spokesman said, then "there would be no need for the marketing order program."

The January decision to give the CNI consumers the legal standing to sue sets a precedent for initiating the same kind of deregulation process that is now undermining the trucking and airlines industries in the United States. As Wayne D. Rasmussen, historian at the USDA, points out, the production and processing of milk is one of the great success stories of the United States. Yet for more than 20 years, the amount of milk produced, the total number of dairy cows in the nation, and the amount of milk consumed by the average American has been declining—not to mention the vast overseas markets that have never been realized under the present monetary system.

Historically, milk supplies for American cities were severely limited by lack of adequate refrigeration and transportation; in 1896, the entire population of New York City was supplied by 2,500 cows stabled in the city. Even after modern refrigeration methods were developed, milk supplies were completely unreliable due to seasonal changes in production and chaotic marketing practices.

Only the 1937 Agricultural Marketing Agreement Act, which established the marketing order program, changed this situation.

The appellate court ruled January that consumers' interests, i.e., the production and distribution of reconstituted milk, were injured because reconstituted milk is not included in the federal program. This could open the way to making distribution of fresh milk prohibitively expensive. Reconstituted milk would make current federal regulation "unnecessary," and possibly lead to abolishing the program.

This would "undermine the entire federal order program," said a spokesman for the National Milk Producers Federation, "and cause a disastrous drop in farm income."

At the same time that the program that structures milk prices and distribution is being opened to attack by the courts, the USDA is going ahead with the second part of the dairy assessment tax policy, intended to force reduced dairy production and reduce the outlays of the Commodity Credit Corporation (CCC) to purchase excess milk. As of April 1, producers will pay \$1 on each hundredweight of milk sold between that date and Sept. 30. If the dairy farmer can prove he has reduced his sales by 10.3 percent, he will be eligible for a 50¢ refund from the CCC.

Part one of the tax assessment went into effect on Dec. 1, but a federal court in South Carolina has blocked collection of the tax so far because the USDA had failed to follow correct procedures in implementing the tax. The law required the Agriculture Secretary to determine whether there would be enough excess production to apply the tax before the marketing year began by holding a series of hearings around the country. These hearings were not held, although regional production levels are well known. Despite this technical delay in the first assessment, USDA has no plans to hold up the second phase of the program.