

Ice Cream: Dairymen Imperiled by FDA's Recipe

The federal government has recently turned the weight of its attention to ice cream, and has already succeeded in turning the issue into a hot potato.

Four years ago Robert W. Weik, a dairy specialist in the Food and Drug Administration, changed a few words in a proposed standard governing the permitted ingredients of ice cream.

That rewording has touched off a multimillion dollar imbroglio which has set two powerful sectors of the dairy industry at each other's throats and sent the country boys in Congress weaving ever more devious circles round their city cousins in an effort to limit the damage. Intensifying the whole struggle is the promise made by a peanut farmer to some dairy farmers during the Wisconsin primary.

The FDA's proposed standard for "America's number one fun food," as the ice cream maker's chief lobbyist touts it, would allow manufacturers to use more casein and whey in their mixes and less milk powder. Casein is the principal protein of milk, and is found mainly in milk. Whey is the even more highly nutritious product left over when milk is converted to cheese (which, as the name suggests is mostly casein). Where is the harm in that?

"This is a terrible, terrible thing that should happen," Pat Healy, chief lobbyist of the National Milk Producers Federation, moans about his dairy industry colleagues, the ice cream makers. "For a group of people operating on the fringes of the industry to take the chance of destroying an industry which is a valuable national asset in order to make a couple of cents extra per gallon of ice cream—I think it is a despicable act by short-sighted, quick-buck artists who have no thought for the long-range impact of their actions."

"The FDA is proposing a technologized frozen dessert product filled with chemicals and dairy waste products—the leftovers of the dairy manufacturing process. This is a matter which is seriously and radically altering one of America's favorite foods," Congressman Frederick Richmond (D-N.Y.) declaimed at a House hearing held on 2 August.

"We want ice cream to stay the real thing," stated Congressman Charles Rose (D-N.C.). "I think what we are concerned about is that America does not go the way of Hitler's Germany in World War II where ersatz became a by-word of products that were sold to its people out of economic necessity."

Last month Rose proposed an amendment to the farm bill directing the Secretary of Agriculture to give his seal of approval to ice cream made according to the still prevailing standards. The amendment has no effect on the FDA's proposed change, but its landslide passage in the House by 363 votes to 11, and acceptance by the Senate, is a measure of the dairy producers' clout on Capitol Hill.

Root Problem: Technological Change

Destruction of the dairy industry, adulteration of the nation's favorite fun food, the restoration of wartime ersatz—what button did the FDA hit to elicit this highly flavored flood of persiflage? The revision of the ice cream standards, needless to say, is just the topping. The underlying issue extends far beyond the little world of frozen desserts, and it has at root to do with technological change.

What has happened is that a new regulatory philosophy, implanted in the FDA by its former general counsel Peter Hutt and others, holds that the agency should not prevent food producers making use of new technologies as long as the nutritional standards of the products are maintained. The doctrine is perfectly in accord with the principles of the free market, but it has opened the way for head-on collision with sectors such as the milk producers, whose approach to maintaining their market share rests not on technological adaptation but on protective measures backed by political clout.

Ice cream happens to be the battleground on which these opposing doctrines have arrived in their inevitable confrontation. The milk producers' public position on ice cream is that the new standards will reduce farmers' income, debase the nutritional quality of ice cream, and deceive the consumer. These arguments have wowed Congress and

the press, perhaps because they play upon the widespread antipathy to chemicalized foods. But they do not bear serious analysis.

Ice cream at present may be made from milk powder (nonfat dried milk), whey, and 11 other milk-derived products including casein, but there are limits on the amounts of whey and casein that ice cream makers may use. The proposed new standards would lift the limits on whey and casein, stipulating only a minimum protein percentage and leaving manufacturers to choose whatever mix of dairy products they pleased to meet it.

Casein, whey, and nonfat dried milk are all highly nutritious substances. In the FDA's view, there would be no loss of quality in an ice cream made with more whey and casein and less milk powder. "Casein is a chemical product made with acid in foreign countries," sneers a staff member of Associated Milk Producers Inc. But casein is a foreign product not because the American cow differs in her physiology from any other cow but because the American government destroyed its own casein industry by instituting the dairy price support program in 1949. American farmers find it more profitable to sell their milk powder at the government-guaranteed support price than to convert it to casein.

Imported casein is a far cheaper product than American-protected milk powder. So too is whey, a surplus by-product of the burgeoning cheese industry. Under the FDA's proposed changes, ice cream makers would have a strong incentive to substitute as much whey and casein for milk powder as possible. Consumer preferences and other factors impose limits on the extent of this substitution. At present, the nation's ice cream makers use 420 million pounds of milk powder a year and 100 million pounds of whey. According to USDA estimates, the upper limit of substitution would lead to the following ingredient mix: 130 million pounds of milk powder, 350 million pounds of whey, and 40 million pounds of casein.

Ice Cream Would Cost Less

The cost savings to manufacturers would eventually, through competition, be passed on to the consumer, amounting to a reduction of 2½ percent in the retail price of ice cream. As for the displaced 290 million pounds of milk powder, the government would have to buy it at the price support level. (Prices for milk powder have been at the support level since 1975 and are likely to stick there "for the foreseeable future.") Therefore, the USDA economists con-

clude, the FDA's proposed ice cream standards "would have no effect on farm prices."

If the proposed ice cream standard would have no effect on the farmer's price for his milk powder, and would in addition expand the market for whey, now being produced in chronic surplus, how is it that the milk producers' chief Washington lobbyist is talking about the imminent destruction of the nation's dairy farms?

The Price Support Program

The milk producers' prime concern is not ice cream at all, and all the rhetoric about defrauding the consumer with foreign chemicals has a purpose quite ulterior to frozen desserts. What is closest to the milk producers' hearts is the dairy price support program. The program is already politically vulnerable for reasons that have a lot to do with Jimmy Carter's rise to the White House. Apparently, during the Wisconsin primary, candidate Carter indicated that he would raise the price support level to as high as 85 percent of parity (parity is a general economic index based on 1910 to 1914 prices). The circumstances surrounding the promise are "very very vague" according to a staff member of the National Milk Producers Federation in Washington, D.C.; the White House "promise book" records no precise parity figure, only the pledge of an "adequate" price.

When Carter duly became President, there emerged a significant difference of opinion on the appropriate price support level between the National Milk Producers Federation and one of its largest member organizations, the Associated Milk Producers Inc. of San Antonio, Texas. AMPI, which first came to public attention through its involvement in Watergate and the Connally bribery case, wanted Carter to keep his promise of an 85 percent level. But the National Milk Producers Federation, watching the mounting surplus of milk and the political cost of too expensive a price support program, asked only for 80 percent of parity.

On 1 April this year, the date for setting the price support level, the Secretary of Agriculture surprised dairymen and almost everyone else by announcing an unexpectedly high support level corresponding to 83 percent of parity. The support level redeems Carter's pledge and benefits dairymen in the short term. But it threatens to double the cost of the support program from \$300 million last year to \$600 million this year, according to National Milk Producers Federation estimates. That is a high price for the

taxpayer to bear just for the sake of protecting milk producers from free market forces.

Against this background, the milk producers' heated reaction to the ice cream issue becomes immediately comprehensible. The milk powder displaced by the FDA's proposed new standards would have to be bought by the government at an estimated cost of \$183 million, according to USDA. Coming on top of the support program's expected doubling in cost, the extra \$183 million could be a very damaging shock, not to say the final straw that breaks the program's political support in Congress. "We fear that the shock may make the Congress rethink the funding of the price support program," explains Pat Healy, secretary of the National Milk Producers Federation. "The politics of the program are all good today, but these continuous raids on it could possibly affect its political image."

To protect the program the milk producers and their supporters in Congress, such as Charles Rose and Fred Richmond, the chairmen of two key agriculture subcommittees, are obliged to fight off the ice cream change by whatever means they can. Healy claims he has the votes in Congress to overrule the FDA if necessary.

Protection Can Be Too Restrictive

Reliance on protection can become addictive, and in at least some observers' opinion, the milk producers have become too dependent on the habit for their own good. At a 2 August hearing held before the Rose and Richmond House subcommittees, food science professor M. E. Gregory of North Carolina State University warned the chairmen not to do for ice cream what Congress did for butter. In 1923 Congress passed a statutory regulation prohibiting the addition to butter of other ingredients, such as those enhancing spreadability. That bad judgment, Gregory said, "stagnated and stymied an industry. It has resulted in an inferior competitive product [margarine] capturing most of the 'spread' market. The butter manufacturers did not keep up the technology necessary to meet consumer demands," Gregory observed, and butter bit the dust. Gregory's moral: "It would seem the dairy industry would have learned its lesson. No more should we paint ourselves into a corner with restrictive decisions in order to accomplish expediency."

The same point was made by former FDA counsel Peter Hutt, the architect of the FDA's new regulatory doctrine.* Hutt has an unusual familiarity with milk

matters, gained when growing up on his father's dairy farm in New York State. "I have seen the dairy industry lose the butter market to margarine, the aerated whipped cream market to whipped toppings, and the cream market to coffee whiteners. A major factor in each of these cases was the industry's attempt to rely on protectionist statutes, like the statutory standard for butter and the Filled Milk Act, rather than attempting to take advantage of modern food technology to produce new products that will be more appealing to consumers. If the industry does not learn from its past mistakes," Hutt added, "it could also lose the market for milk, ice cream, and cheese."

Hutt's regulatory philosophy stems from the 1969 White House Conference on Food, Nutrition and Health, which espoused two cardinal principles: that food products should be safe and properly labeled, and that consumers should have the opportunity to decide, by their purchases in a free market, what food they intend to consume. From this it follows that it is not the job of the FDA, by its statutes or regulations, to protect any food product from competition. In the case of products such as ice cream, Hutt led the agency away from a recipe type approach to food regulation, which tied producers to particular ingredients and hampered flexibility. He favored instead an approach based on nutritional equivalence, whereby manufacturers can use any safe and suitable ingredient to formulate a standard product, as defined by the FDA.

Hutt's faith in the free market and technological flexibility clashed sharply with agriculture committee members' belief that the dairy producers deserved protection. Cows cannot change their product, chairman Rose observed, so surely the answer was to outlaw imitation products. "Why can we not ban substances that attempt to traffic on the reputation of natural foods?" he demanded of Hutt.

*Hutt's principal reason for appearing before the committee was to rebut charges in a Jack Anderson column 2 weeks earlier that Hutt's association with the ice cream makers prior to joining FDA had raised an improper conflict of interest in his handling of the proposed ice cream standards. Hutt furnished the House subcommittees with a detailed statement explaining that there had been no conflict. The only other relevant evidence at the hearing was a statement by FDA commissioner Donald Kennedy affirming that the agency had reviewed Hutt's statement and "found it accurate in all particulars." Nevertheless, chairman Rose had appended to the hearing record a statement saying he is "not pleased with the appearance of a conflict of interest" on Hutt's part. Asked on what evidence Rose was trying to perpetuate the smear on Hutt's name, subcommittee counsel Carol Forbes said at first the evidence was in Hutt's own statement and second, that Rose himself would have to answer. Rose had not returned a call at press time.

"That is possible," was Hutt's reply. "But to ban a product like margarine or whipped topping or coffee whiteners, which are perfectly legitimate, safe products . . . to me is not in the spirit of democracy and the marketplace as I know it in America today."

Technical flexibility is fine in theory, yet in practice most people believe they prefer traditional foods and blame technology for the debased versions that tend to drive them off the market. But the role of technology is more complex, as FDA commissioner Kennedy explained when Representative Margaret M. Heckler (R-Mass.) accused him of having allowed ice cream quality to deteriorate far enough already. "The FDA has not presided over this deterioration in the quality of ice cream," Kennedy responded.

"What happens, as happens in any technology, is that people find out how to do something a little better within the old limits, and then people exercise their preferences in the marketplace. There is plenty of ice cream sold that is absolutely delicious. It just costs a lot to make, just as it costs you a lot to make it at home if you choose to be a rebel against the quality of the ice cream that is in the supermarket."

"Restrictive law does two things," says Hutt. "It fences out some people, but it also fences in the people it is designed to protect." The milk producers have to fight the FDA on ice cream in order to protect their own basic protection, the dairy price support program. As major victims of technological progress—the number of dairy herds has

shrunk from 4 million to less than 200,000 in the last 20 years—they are perhaps owed a measure of protection to ease the impact. But protection as a pain-killer is different from protection as a habit.

The FDA's proposed standards come into effect on 7 September, unless the milk producers are granted a delay or unless they end-run the agency in Congress. Whether or not the standards change, American ice cream will continue to be made from dairy products of one sort or another, unlike in England, for example, where 80 percent of ice cream is made of fish oil, pig fat, or soybean oil. The FDA could hardly be having more trouble from the milk producers' lobby than if it had suggested just such a recipe.

—NICHOLAS WADE

Moratorium for the Bowhead: Eskimo Whaling on Ice?

The plight of whales under the onslaught of commercial whaling fleets makes many Americans feel passionately protective. And the right of Eskimos to pursue their arduous way of life and preserve their culture commands considerable sympathy and support.

Now it seems that the federal government will be forced to choose between Eskimo rights and the possible survival of one species of whale—the bowhead. And, to complicate matters, the decision could have a serious effect on U.S. credibility as a strong partisan of protection of all whales.

At issue is the special exemption under which the coastal Eskimos of northwest Alaska have been able to hunt the bowhead whale. The bowhead, *Balaena mysticetus*, is the biggest—up to 60 feet long—of the arctic whales and plays a central role in Eskimo life both as a source of food and as the keystone of the native culture.

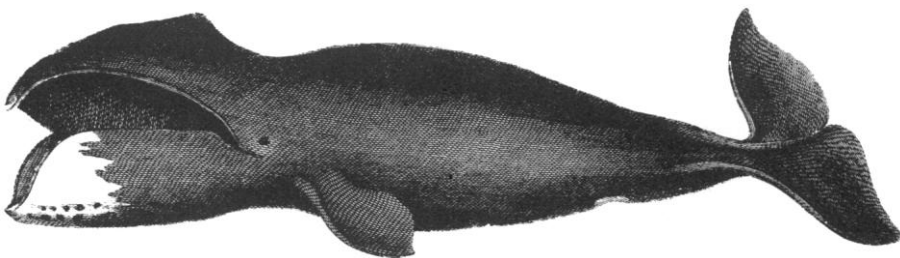
The bowhead has been completely protected from commercial whaling since the early 1930's and is on the U.S. endangered species list. However, a special exemption for aboriginal whaling has been allowed under the rules of the International Whaling Commission, which is made up of the major whaling nations.

At its annual meeting in Canberra, Australia, in June, however, the IWC adopted a moratorium on the killing of bowhead whales in the North Pacific by native Alaskans and other aboriginal people. Siberian Eskimos have also hunted the bowhead, but killed them in relatively small numbers.

The IWC action was prompted by reports of a rapidly increasing harvest of bowheads by Eskimo crews in the past few years. The commission's scientific committee, which urged the moratorium,

was especially concerned by the rapid rise in the number of whales reported struck but not killed by the explosive "bombs" used by the Eskimo whaling crews.

The Eskimos have reacted angrily to the threat of the moratorium. They charge that federal officials failed to warn them that the IWC was seriously concerned about the bowhead. They resent what they see as arbitrary action by the international body when commercial whaling is not involved. They are suspicious of conservationists, and feel that some of them conspired to have the exemption removed as part of a campaign to prohibit all whaling. The Eskimos also vigorously dispute the statistics on which the action was based. They insist that the increase in the number of whales apparently wounded but lost reflects new reporting methods which actually exaggerate the impact of the harvest. And not



Available photographs of the live bowhead don't do the whale justice. This lithograph from a remarkable 1820 book on the arctic regions by whaling captain William Scoresby, Jr., is regarded as the most satisfactory representation of the whale extant. Scoresby's writing on the bowhead is mentioned in the chapter on cetology in Herman Melville's *Moby Dick*. The lithograph is reproduced from an article on the bowhead by Scott McVay in the January-February 1973 *American Scientist*.