

Task Force to Revitalize the Vermont Dairy Industry

Presentation of Final Report and Draft Legislation
To Amend Vermont Milk Commission Statute
6 V.S.A. Chapter 161

Vermont Senate Agriculture Committee. March 15, 2023

Part 2 – Review of draft amendment language

Daniel Smith, Esq., Task Force Co-Chair

TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY MEMBERSHIP

- Sen. Robert Starr, Co-Chair..... ..Senate Committee on Agriculture (Chair), Appropriations
- Dan Smith , Co-Chair.....Attorney, Dairy Law Specialist
- Sen. Randy Brock....Senate Committee on Economic Development, Housing and General Affairs
- Rep. Michael Marcotte.....House Committee on Commerce (Chair)
- Rep. John O'Brien.....House Committee on Agriculture and Forestry
- Heather Darby.....UVM Extension
- Jackie Folsom.....Vermont Farm Bureau

Presentation Summary

- Recap Task Force's Findings and Conclusions
- Review Report's draft amendments
- Recommended additions/changes
- Process Review

Task Force Findings and Conclusions

1. The Vermont dairy Industry has been transformed
 - **From an industry that historically exported almost all raw milk production to the Boston beverage milk marketplace**
 - **To a flourishing in-state value-added, high margin, dairy manufacture products industry**
 - ✓ *1.95 bil lbs milk equivalent = 60 - 65% of overall Vermont raw milk production,*
 - ✓ *Utilizes 80 - 85% Vermont milk for raw milk supply to plants, and*
2. The Vermont dairy industry has lost dairy farms at an alarming rate while the value added manufacturing sector thrives
 - ❑ **70% of Vermont FMMO 1 pooled farms have ceased operation since 2000 (467/1,549)**
 - ❑ **65% of organic farms have ceased operations in the past 6-7 years (136/203)**
3. The transformation of the State's dairy industry has re-established the State's milk market regulatory authority

- 4. The enabling Legislation for the Vermont Milk Commission needs substantial updating and revision to reflect the transforming changes to the industry and innovations in milk market regulation that have occurred, along with associated legal requirements.**
- 5. The out-of-state sales of finished dairy products is a critical feature of market structure that uniquely defines the State's renewed regulatory authority.***
- 6. Updating the enabling law is only one of a multi-step process involved with milk market regulation, and may or may not lead to a price change.**



VERMONT



15,500 TOTAL JOBS



\$43.6 Million
IN EXPORTS

\$843.6 Million
IN TOTAL WAGES

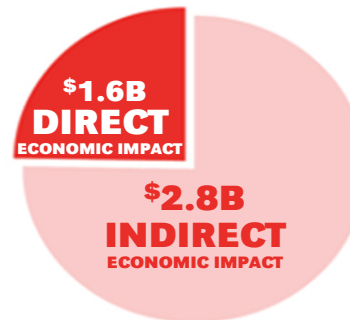
3.5%
US GDP CONTRIBUTION

13.0%
VERMONT GDP CONTRIBUTION

\$189.1 Million
FEDERAL TAX CONTRIBUTION

\$136.3 Million
STATE TAX CONTRIBUTION

\$4.39 BILLION
TOTAL ECONOMIC IMPACT



International Dairy Foods Association
202.737.4332 | info@idfa.org | www.idfa.org

Change in Vermont FMMO 1 Pooled Milk To Plant Destination

Dan's Estimate*

Audited FMMO 1 Data**

<u>1996</u>		<u>2011</u>	<u>2019</u>
Percent			
15%	to VT	46.1	62
85%	to Outside of VT	53.9	38
75%	to MA	35.9	24

*ED, Dairy Compact Commission

**Brian Riordon, FMMO 1 Economist, Report to the Task Force, October, 2021

VT FMMO 1 Plant Raw Milk Usage and Supply In and Out-of-State (2020)

FMMO 1 Pool Milk Received by Plants in Vermont (Audited)*

	2020	
	<i>Pounds</i>	<i>%</i>
From VT Source	1,578,952,843	81.2%
From Outside VT	365,002,671	18.8%
Total	1,943,955,514	

Total VT FMMO 1 Milk Production = 2,557,800,000 **

- * Brian Riordon, FMMO 1 Economist, Report to the Task Force, October, 2021;
** FMMO 1 Statistical Handbook

Loss of Vermont FMMO 1
Pooled Farms Since 2000*

2000	1,549
2005	1,201
2010	978
2012	920
2013	875
2014	836
2015	793
2016	760
2017	728
2018	669
2019	618
2020	569
2021	520
2022	467

Loss of Vermont Organic Dairy
Farms Since 2012**

2012	205
2013	198
2014	184
2015	184
2016	203
2017	199
2018	190
2019	187
2020	169
2021	162
2022	155
2023	136

* FMMO 1 Statistical Handbook

** Vermont Agency of Agriculture, Dairy Data, January 28, 2021; Bothfeld presentation to Task Force, Aug, 2022, VT Digger, Feb 9, 2023

Need to Update and Revise 6 V.S.A. Chapter 161

6 V.S.A § 2921. Declaration of policy and purpose

(b) The general purposes of this subchapter are to protect and promote the public welfare by insuring at all times an adequate supply of clean, pure milk and cream of proper quality to meet the needs of the inhabitants of this State...

(Added 1965, No. 175, § 39; amended 1991, No. 17, § 2, eff. April 4, 1991.)

Draft Amendments

Account for industry changes

- **Diverse manufacturing industry has replaced fluid business**
- **organic and farmstead**
- **Environmental cost/compliance**
 - pricing criteria
 - Add ANR secretary
- Call for trucking charge review

Updated milk market regulation

- **Add production oversight**
- **Authorize tier payments**
- **Add producer referendum**
- **Add exemptions**
 - Nutrition programs
 - Producer handlers
- Clarify no “reblending” of over-order proceeds allowed
- Require milk check transparency
- Clarify situs of transfer definition
- Add emergency authority

Specifically Account for Organic Production

Producer Price Regulation; § 2925(b):

“(b) Guidelines for setting prices. In setting equitable minimum prices, the Commission may investigate and ascertain what are reasonable costs and charges for producing, hauling, handling, processing, and any other services performed in respect to Vermont raw milk production and the processing and manufacture of Vermont dairy products....The Commission shall also take into account the marketing conditions and costs of all differing market sectors, including organic and conventional raw milk production, processing, and manufacture. The Commission may set the equitable minimum price according to market sector, such as a separate price for organic milk production or any other type of production.”

➤ Other New § 2925 Price Regulation Requirements

***Production Oversight Requirement
(Dairy Compact language) - § 2925(d)(1)***

(d) A minimum producer price order shall include additional provisions regulating milk supplies

(1) to ensure the over-order price does not create an incentive for producers to generate additional supplies of milk or imbalance in supply and demand for raw milk in the Vermont dairy marketplace.

***Environmental Compliance
Requirement - § 2925(d)(2)***

(d) A minimum producer price order shall include additional provisions regulating milk supplies

(2) to assure that Vermont raw milk production is sustainable and without adverse impact on the environment.

Producer Referendum Requirement § 2925(f)

- (f) The Commission shall conduct a referendum among producers subject to an order regulating price to determine whether the issuance or amendment of an order establishing a minimum producer price, including any provision with respect to milk supplies under subsection (d) of this section, is approved by producers.
 - (1) Two-thirds of shipping producers
 - (3) No block voting
 - (4) Negative vote does not invalidate Order

Co-Chairs' Proposed Changes to Bill Draft

Add to Bill Statement of Purpose

Statement of purpose of bill as introduced: This bill proposes to amend the authority of the Vermont Milk Commission to ~~clarify~~ update the discretionary authority of the Milk Commission to investigate and to set an equitable minimum price that milk handlers shall pay to milk producers for milk processed and manufactured within the State. The bill authorizes the Milk Commission to account for the marketing and environmental conditions and costs of all differing market sectors, including organic and conventional raw milk production, processing, and manufacture, and to provide for tiered payments to producers The Bill also proposes additional procedures that the Milk Commission would be required to follow in setting an equitable minimum producer price, including a producer referendum ~~and production oversight and exemptions for nutrition programs and farmstead operations~~ public hearings. ~~In addition, the bill clarifies the procedure that the Milk Commission would follow to disburse the proceeds from the minimum producer price directly to individual producers who are subject to price regulation.~~ The bill would also appropriate \$800,000.00 to the Agency of Agriculture, Food and Markets for implementation of the Dairy Risk Management Assistance Program in fiscal year 2023.

Update Chapter 161 Declaration of Policy Intro

§ 2921. DECLARATION OF POLICY AND PURPOSE

(a) It is hereby declared by the General Assembly that Vermont dairy farming at present is in serious jeopardy. Federal Milk Market Order regulated minimum producer pricing is highly volatile as well as inadequate to cover costs of milk production, and market forces do not otherwise operate to provide a reasonable return for most producers. This combined inadequacy of regulatory and market performance has harmed both conventional and organic dairy operations, resulting in the loss of seventy percent of the State's dairy farms since 2000. It is further declared that the State's dairy industry, now including a flourishing manufactured dairy products business as well as dairy farming, is of paramount importance to the public interest and the health, welfare, and reasonable comfort of the inhabitants of the State. Dairy farming makes up sixty-five percent of the State's agricultural activity and is essential to preserving the State's rural character and achieving and maintaining the State's environmental goals. Combined, the two sectors are essential to maintaining a strong economy. It is further declared that the precipitous loss of dairy farms imperils the entire distribution structure of the State's dairy industry. The State can and should respond to the current federal regulatory and market challenges to ensure that Vermont farming operations are no longer irrationally forced out of operation. This is also necessary to ensure that there continues to be an adequate supply of milk for the State's processing and manufacturing industry and for the consuming public both inside and outside Vermont, and to maintain the public's greater interest in a sustainable dairy industry.

Clarify and Strengthen Directive to Milk Commission

Sec. 2. VERMONT MILK COMMISSION

Within 90 days of the effective date of this act, the Vermont Milk Commission shall convene and hold a public hearing at which the Commission shall determine whether to exercise its authority under 6 V.S.A. chapter 161 to issue an order regulating the minimum producer price to be paid by milk handlers to milk producers for milk sold to handlers for processing and production in Vermont. The Commission shall issue a written report providing the basis for its decision whether to exercise its authority. The Commission shall submit its written report to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry not later than November 1, 2024.

Sec. 2. VERMONT MILK COMMISSION

- (a) Pursuant to 6 V.S.A. Chapter 161, the Vermont Milk Commission shall conduct a “subjects and issues” rulemaking procedure to investigate and consider whether the issuance of a minimum producer price regulation order can effectively respond to the precipitous loss of Vermont dairy farms. The Commission shall investigate the imposition of a price regulation order for conventional and organic milk production.
- (b) The Milk Commission shall issue notice of the hearing procedure not later than 60 days after the effective date of this Act, and determine whether to issue a proposed minimum producer price regulation order not later than eight months after the effective date of this Act.

- (c) If the Milk Commission determines not to proceed with the issuance of a proposed minimum producer price regulation order, it shall so notify the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry, not later than February 15, 2024. The Commission shall provide a written report to the Committees that explains the causes of the loss of Vermont conventional and organic dairy farms, and further explains why a price regulation will not be effective as a means to stem their loss.
- (d) The sum of \$150,000 is appropriated to the Agency of Agriculture, Food and Markets from available American Rescue Plan Act (ARPA) - Coronavirus State Fiscal Recovery Funds to fund the Milk Commission's conduct of the rulemaking procedure directed by this Section.

Sec. 4. Effective date

This act shall take effect on July 1, 2023. passage.

Process Review

Compact Process

1987 – 1992	Six state adoption of Compact (VT = 149-1)
1992 –	
April 4, 1996	Congressional approval
August 28, 1996	Secretary Glickman finding of compelling public interest

- **December 13, 1996**
Notice of “Subjects and Issues” rulemaking
- Dec 17 & 19 Subjects and issues Hearings
- January 2, 1997
Initial written comment period ends
- January 16 Commission meeting; 3 working groups
- March 14 Notice for additional comment
- April 9 Additional comment period ends
- **April 28** **Proposed rule issued**
- **May 14** **Final rule issued**
- **May 15-27** **Producer referendum**
- May 30 Final rule verified; published in Fed Reg
- July 1 Effective date (six months)

6. Process Review

Multi-step process that may or may not lead to price regulation order

1. *Legislative Task Force addresses updates existing State regulatory authority to account for transforming changes that have occurred to the State's dairy industry*
2. *Legislative action to amend 6 V.S.A. Chapter 161*
3. *Milk Commission Rulemaking procedure*
 - a. *"Subjects and Issues" hearing procedure*
 - *Critical issues of consumer and industry impacts would be comprehensively assessed here*
 - b. *Issuance (or not) of a "Proposed Rule" and additional hearing procedure*
 - c. *Issuance (or not) of "Final Rule"*
 - d. *Producer referendum (approval or not)*

Subjects and Issues

- The costs of producing raw milk in Vermont and other states from which milk supply is received.
- The costs of marketing and delivering bulk milk to Vermont processing and manufacturing plants from within and outside Vermont.
- The costs of processing and manufacturing dairy products in Vermont and by other plants in competition with Vermont processing and manufacturing plants.
- The costs of distributing Vermont finished dairy products Vermont wholesale and retail outlets and to outlets in representative markets for such Vermont dairy products outside of Vermont.

- The costs of retailing Vermont finished dairy products within Vermont, and in representative markets for Vermont products outside of Vermont.
- The prevailing farm, wholesale and retail prices for milk and dairy products within Vermont, and in representative markets for Vermont milk and finished dairy products outside of Vermont
- Price or prices needed to yield a reasonable return to Vermont dairy farmers, depending on manner of production (conventional and organic) and scale of operation.
- The purchasing power of the Vermont general public and the general public in representative markets for Vermont dairy products outside of Vermont.
- The econometrics of price transmission from the farm to retail price for Vermont finished dairy products in Vermont and in representative markets outside of Vermont.
- The potential impact of price regulation on government nutrition programs, and the manner by which an exemption may be devised.