

Task Force to Revitalize the Vermont Dairy Industry: Final Report

**Required by 2020 Acts and Resolves No. 129, Sec. 31 and
2022 Acts and Resolves No. 162, Sec. 9**

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I. STATUTORY CHARGE OF THE TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY

2020 Acts and Resolves No. 129, Sec. 31

Sec. 31. DEPARTMENT OF FINANCIAL REGULATION; OVERSIGHT
OF MILK PRICING IN VERMONT; REPORT; TASK FORCE

(a) Findings. The General Assembly finds that:

(1) The minimum pay price received by most dairy farmers in Vermont is regulated and established by the Federal Milk Market Order Program based on a complex formula, and under this formula, the regulated minimum price for Vermont dairy farms has been for many years set at an amount below the costs of production.

(2) Most dairy farmers in Vermont utilize the two-remaining membership-based dairy cooperatives to sell their milk for market prices above the federally regulated minimum pay prices, and the cooperatives levy fees and other surcharges on their member dairy farmers to cover the marketing costs.

(3) Amidst radical market changes and an oversupply of milk, the dairy cooperatives recently have been unable to obtain pay prices for Vermont dairy farmers that are above the federally regulated minimum prices, and, as a result, the charges assessed to their members have often caused the net price that Vermont dairy farmers receive to fall below the regulated minimum prices and to amount to significantly less than the costs of production.

(4) Vermont dairy farms have suffered from combined regulatory and market failures, and 60 percent of the State's dairy farms subject to the federal regulatory program have closed since the year 2000.

(5) Before Vermont loses another substantial portion of its remaining dairy farming community, the State agency with expertise in financial regulation and rational market pricing should review the milk pricing system for dairy farmers in Vermont to collect and assess data on

the long-term sustainability and fairness to the Vermont dairy farming community of the federal milk market order pricing system, current market conditions, and dairy cooperative operation.

(b) Report. On or before January 15, 2021, the Commissioner of Financial Regulation shall submit to the Senate Committees on Agriculture and on Economic Development, Housing and General Affairs and the House Committees on Agriculture and Forestry and on Commerce and Economic Development an assessment of the long-term sustainability of Vermont dairy farming under the existing federal milk market order pricing system, current market conditions, and dairy cooperative operation. In developing the assessment, the Commissioner of Financial Regulation shall obtain from the Secretary of Agriculture, Food and Markets an accounting of payments made to milk producers under the federal milk market order. After consultation with the Secretary of Agriculture, Food and Markets, the Commissioner is authorized to utilize the Vermont Milk Commission's authority under 6 V.S.A. § 2936 to obtain information from milk handlers regarding the prices paid to purchase various forms of milk from Vermont producers; the costs of production, processing, transporting, distributing, and marketing milk; and any other information deemed necessary and relevant by the Commissioner. The Commissioner is also authorized to use the authority established under 6 V.S.A. § 2936, and the authority under 8 V.S.A. § 13, to assess the use and impact of payments made to milk producers. The report of the Commissioner of Financial Regulation shall include:

(1) an evaluation of the long-term sustainability of dairy farming in Vermont under the current regulatory and market conditions; and

(2) recommendations for revising regulated dairy pricing and other market regulation in the State to improve the future viability of Vermont dairy farming.

(c) Task force.

(1) After receipt of the report required under subsection (b) of this section, the Committee on Committees and the Speaker of the House shall appoint a joint committee of legislators and other experts to be known as the Task Force to Revitalize the Vermont Dairy Industry to develop legislation to implement the recommendations of the Commissioner of Financial Regulation.

(2) The Office of Legislative Council shall call the first meeting of the Task Force to occur not later than 45 days after receipt of the report required under subsection (b) of this section.

(3) The Task Force shall elect co-chairs from among its members at the first meeting.

(4) A majority of the membership shall constitute a quorum.

(5) The Task Force shall submit draft legislation to the General Assembly on or before December 15, 2021.

(6) The Task Force shall cease to exist on March 1, 2022.

(7) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.

(8) Other members of the Task Force that are not legislative members shall be entitled to both per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.

2022 Acts & Resolves No. 162, Sec. 9. Extension of Task Force

Sec. 9. EXTENSION OF TASK FORCE TO REVITALIZE THE

VERMONT DAIRY INDUSTRY

(a)(1) Notwithstanding 2020 Acts and Resolves No. 129, Sec. 31(c)(6), the Task Force to Revitalize the Vermont Dairy Industry shall continue to exist and retain the authority granted to it in 2020 Acts and Resolves No. 129, Sec. 31 until February 1, 2023.

(2) The Task Force shall consist of:

(A) two members of the House of Representatives, appointed by the Speaker of the House;

(B) two members of the Senate, appointed by the Committee on Committees; and

(C) four nonlegislators with experience or knowledge of the Vermont dairy industry, two of whom shall be appointed by the Speaker of the House and two of whom shall be appointed by the Committee on Committees.

(b)(1) For attendance of a meeting of the Task Force to Revitalize the Vermont Dairy Industry during adjournment of the General Assembly between the effective date of this act and February 1, 2023, a legislative member of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force that are not legislative members shall be entitled to both per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings. These payments shall be made from monies appropriated to the Agency of Agriculture, Food and Markets

II. MEMBERS OF THE TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY

Sen. Robert Starr, Co-Chair.....Senate Committee on Agriculture

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

Rep. John O'Brien.....House Committee on Agriculture and Forestry

Heather Darby.....UVM Extension

Jackie Folsom.....Vermont Farm Bureau

III. OVERVIEW OF TASK FORCE ACTIONS

During the 2020 legislative session, the Vermont General Assembly enacted 2020 Acts and Resolves No. 129, Sec. 31 (Act 129). Act 129 established a Task Force to Revitalize the Vermont Dairy Industry (Task Force) to respond to analysis by the Department of Financial Regulation and to recommend legislation to revise dairy pricing and other market regulation in the State to support Vermont dairy farming. The Task Force submitted its original report to the Vermont General Assembly on January 3, 2022.

In its original report, the Task Force recommended several legislative actions. The General Assembly enacted some of these recommendations. Notably, the General Assembly appropriated monies to fund dairy farmer participation in U.S. Department of Agricultural risk management programs. The General Assembly also amended criteria under several agricultural assistance programs to expand eligibility for federal assistance.

The Task Force's original report also recommended that the General Assembly obtain legal opinions from national experts regarding the constitutionality of potential legislative options for the State to enhance milk prices paid to dairy farmers or to stabilize the milk pricing markets. The General Assembly approved funding for these legal opinions. The Task Force contracted for legal opinions from Professor Brannon Denning of the Samford University's Cumberland School of Law. Professor Denning concluded that the price stabilization and enhancement authorities considered by the Task Force likely would be constitutional.

In 2022, the General Assembly extended the authority of the Task Force in 2022 Acts and Resolves No. 162 in part to pursue further action on the price stabilization and enhancement alternatives analyzed by Professor Denning. In subsequent meetings, the Task Force conferred with multiple interested parties regarding current conditions in the milk market, pricing under the

federal milk marketing order system, the rising costs of production, and the unique environmental costs that dairy farmers face in Vermont. The Task Force discussed how to best address the multiple concerns posed by farmers and other interested parties.

At its last meeting, the Task Force voted unanimously to support two legislative proposals to the General Assembly. First, the Task Force voted to recommend that the General Assembly appropriate additional funds to the Agency of Agriculture, Food and Markets in fiscal year 2023 for purposes of the Dairy Risk Management Assistance Program. The General Assembly appropriated \$2.6 million for the Dairy Risk Management Assistance Program in 2021 and included in that appropriation authority for the Agency of Agriculture, Food and Markets to use any funds unexpended in fiscal year 2022 for the purposes of the program in fiscal year 2023. Approximately \$1.6 million of the appropriation for dairy risk management was expended in fiscal year 2022. If demand in fiscal year 2023 for participation in the Dairy Risk Management Assistance Program is the same or similar to participation fiscal year 2022, additional funds will be required to meet demand. Thus, the Task Force recommends that the General Assembly appropriate \$800,000.00 to the Agency of Agriculture, Food and Markets for purposes of the Dairy Risk Management Assistance Program in fiscal year 2023.

The second recommendation of the Task Force is for the General Assembly to amend the authority of the Vermont Milk Commission to establish by order the minimum price that milk handlers pay milk producers (dairy farms) for their fluid milk. The Vermont Milk Commission currently is authorized by statute to set such an order. However, that authority needs updating to reflect the change in the Vermont milk market from an economy based on providing raw milk for fluid use out of state to an economy based on providing raw milk for the processing and manufacturing of value-added products within Vermont. Moreover, the Task Force recommends

updating the process and procedure that the Milk Commission would follow when establishing an order setting the minimum price for milk is pursued. In addition, the Task Force recommends that the Milk Commission be required to meet in order to determine whether and how it will exercise its authority to establish the minimum price for milk by order.

As required by the enabling authority of the Task Force, the recommendations of the Task Force are provided as draft legislation attached to this report.

1 Introduced by Senator Starr

2 Referred to Committee on

3 Date:

4 Subject: Agriculture; Vermont Milk Commission; milk pricing

5 Statement of purpose of bill as introduced: This bill proposes to amend the
6 authority of the Vermont Milk Commission to clarify the discretionary
7 authority of the Milk Commission to set an equitable minimum price that milk
8 handlers shall pay to milk producers for milk processed and manufactured
9 within the State. The bill proposes additional procedures that the Milk
10 Commission would be required to follow in setting an equitable minimum
11 producer price, including a producer referendum and public hearings. In
12 addition, the bill clarifies the procedure that the Milk Commission would
13 follow to disburse the proceeds from the minimum producer price directly to
14 individual producers who are subject to price regulation. The bill would also
15 appropriate \$800,000.00 to the Agency of Agriculture, Food and Markets for
16 implementation of the Dairy Risk Management Assistance Program in fiscal
17 year 2023.

18 An act relating to the authority of the Vermont Milk Commission to set an
19 equitable minimum price paid to milk producers

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 6 V.S.A. chapter 161 is amended to read:

3 CHAPTER 161. VERMONT MILK COMMISSION

4 Subchapter 1. Vermont Milk Commission

5 § 2921. DECLARATION OF POLICY AND PURPOSE

6 (a) It is hereby declared by the General Assembly that dairy farming is of
7 paramount importance in helping to maintain a strong economy ~~and, including~~
8 the State's flourishing manufactured dairy products industry; in preserving the
9 State's rural character; in achieving and maintaining the State's environmental
10 goals, and that dairy farming at present is in serious jeopardy because of the
11 ~~rapidly declining~~ inadequate and volatile price of milk being paid to producers
12 while corresponding costs of production remain the same or increase; ~~that and~~
13 because the federal milk marketing order minimum price for milk is now and
14 may be in the future inadequate to cover the costs of milk production and
15 provide for a reasonable economic return to dairy producers; The General
16 Assembly further finds that the entire distribution structure of the State's milk
17 industry is threatened; and that Vermont should ensure that there is an
18 adequate supply of milk for the State's processing and manufacturing industry
19 and for the consuming public both inside and outside Vermont. The General
20 Assembly also reaffirms and restates its findings and statement of policy as set
21 forth in section 2671 of this title. Due to the uncertainty in the federal milk

1 ~~market~~ marketing order structure and marked fluctuations in market order
2 prices, the dairy industry of the State is imperiled, which is a menace to the
3 health, welfare, and reasonable comfort of the inhabitants of the State.

4 (b) The general purposes of this subchapter are to protect and promote the
5 public welfare by ~~insuring~~ ensuring at all times an adequate supply of clean,
6 pure milk and cream of proper quality to meet the needs of the inhabitants of
7 this State and the procurement needs of the State's processing and
8 manufacturing industry; to ensure the continuing economic vitality of the dairy
9 industry by ~~stabilizing~~ regulating the price received by supplying farmers for
10 their milk at a level allowing them an equitable rate of return; and to recognize
11 the unique costs of production that Vermont dairy farmers incur to comply the
12 State's specific environmental compliance requirements. These purposes are
13 to be accomplished through regulation of the State's milk-marketing industry,
14 and through control in general, consistent with constitutional limitations, of the
15 price of all ~~fluid~~ raw milk and dairy products sold or offered ~~or exposed~~ for
16 sale to the inhabitants of this State and by Vermont farmers and Vermont
17 handlers, to the end that the public health and economic welfare of the State
18 shall not be menaced or jeopardized.

19 § 2922. VERMONT MILK COMMISSION; MEMBERSHIP

20 There shall be a Vermont Milk Commission, to consist of ~~nine~~ ten
21 members, one member of which shall be the Secretary of Agriculture, Food

1 and Markets and one of which shall be the Secretary of Natural Resources.

2 The Secretary of Agriculture, Food and Markets shall be chair of the
3 Commission and serve without compensation. A quorum shall be a majority
4 of the Commission. The Commission shall act only by an affirmative vote of
5 at least six members. The remaining Commission members shall serve for
6 terms of three years, except for the legislative members who shall serve for the
7 term of their election, and be chosen as follows:

8 (1) Each dairy farmer cooperative, and each proprietary handler
9 purchasing milk from independent farmers, doing business in the State and
10 registered with the Secretary of State's office shall submit the name of a
11 Vermont dairy farmer with knowledge of the production and marketing of
12 dairy products to the Vermont Dairy Industry Association. The Board of
13 Directors of the Association shall submit the names of four of these persons to
14 the Governor, who shall appoint two Commission members from the list
15 submitted. The initial appointment of one of these members shall be for a term
16 of two years.

17 (2) Each milk handler doing business in the State and registered with the
18 Secretary of State's office shall submit the name of one such handler with
19 knowledge and experience in the marketing of dairy products to the Vermont
20 Dairy Industry Association. The Board of Directors of the Association shall
21 submit three names to the Governor, who shall choose one Commission

1 member from the list provided. In compiling the lists under subdivisions (1)
2 and (2) of this section, the Board shall consider whether the persons chosen
3 sell their milk to or are handlers who purchase a substantial percentage of their
4 milk from Vermont producers and utilize the milk purchased in the most
5 advantageous manner possible.

6 (3) Two members representing milk consumers and having no pecuniary
7 interest in the sale of milk or milk products shall be chosen by the Governor.
8 The initial appointment of one of these members shall be for a term of one
9 year.

10 (4) One dairy farmer, chosen directly by the Governor, who does not
11 serve on the Board of Directors of any organization ~~which~~ that handles or
12 processes dairy products, nor is an officer of any organized farm organization
13 in the State.

14 (5) One member from the House Committee on Agriculture and
15 Forestry chosen by the Speaker and one member from the Senate Committee
16 on Agriculture chosen by the President Pro Tempore of the Senate. For
17 attendance at a meeting when the General Assembly is not in session, these
18 two legislative members shall be entitled to the same per diem compensation
19 and reimbursement of necessary expenses as provided members of standing
20 committees under 2 V.S.A. § 406.

1 § 2923. ADMINISTRATIVE WORK

2 The Vermont Agency of Agriculture, Food and Markets shall perform the
3 administrative work of the Commission as directed by the Commission. The
4 Commission may reimburse the Agency of Agriculture, Food and Markets for
5 the cost of services performed by the Agency. The Commission may enter into
6 contracts with and employ technical experts and authorize and retain legal
7 counsel and other such officers, agents, and employees as are necessary to
8 effect the purposes of this chapter and may fix their qualifications, duties, and
9 compensation. The contract remuneration and employment compensation shall
10 be paid from the Vermont Milk Commission ~~fund~~ Fund and shall be subject to
11 the limitations of section 2924 of this chapter.

12 § 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC
13 HEARINGS

14 (a) Authority over milk prices. The Commission may establish an
15 equitable minimum or maximum price, or both, and the manner of payments,
16 which shall be paid producers or associations of producers by Vermont
17 handlers, and the prices charged consumers and others for milk used in dairy
18 products by distributors or handlers. The cost of the contracts and employment
19 pursuant to section 2923 of this title and of administering the collection and
20 distribution of monies collected under this section shall not exceed
21 \$100,000.00 annually and may be collected independently from any

1 assessment imposed under this section. The Commission may impose an
2 assessment to cover the initial costs of establishing a pricing order as
3 authorized by this section.

4 (b) Equitable minimum producer prices. The Commission may establish
5 by order after notice and hearing an equitable minimum price to be paid by
6 Vermont handlers to dairy producers for milk ~~produced~~ manufactured or
7 processed in Vermont on the basis of the use thereof in the various classes,
8 grades, and forms. Prices so established ~~which~~ that exceed federal milk
9 marketing order prices shall be collected by the Commission from the handlers
10 for distribution to dairy producers as ~~a blend price~~ an equalization payment
11 from the equalization pool and fund established by section 2938 of this title
12 and in accordance with subsection 2925(e) of this title.

13 (c) Public hearings. In order to be informed of the status of the State's
14 dairy industry, the Commission shall hold a public hearing at least annually,
15 ~~when~~ whenever directed by the General Assembly, ~~and or~~ or whenever the ~~chair~~
16 Chair deems it necessary.

17 (d) Voluntary payments. The Commission may accept voluntary premium
18 payments for distribution to dairy farmers as a blend price.

19 (e) Premiums on handlers and distributors for milk used in dairy products
20 sold at retail in Vermont. The Commission may assess a premium on handlers
21 and distributors for milk used in dairy products sold at retail in Vermont. The

1 premiums assessed and received shall be paid to the State Treasury and
2 deposited in the special fund established pursuant to section 2938 of this
3 chapter. The proceeds of the premium shall be distributed to dairy producers
4 as a blend price. Any applicable provision of subsections 2925(b)–(f) of this
5 title shall apply to the assessment of such premiums. In assessing these
6 premiums, the Commission shall also take into account any similar
7 assessments made by other states.

8 (f) Payment Statements. Payment statements provided to producers of
9 cows' milk shall include in the payment statement the national support price;
10 the ~~Boston~~ Suffolk County, Massachusetts, price; the producer price
11 differential; and the amount per hundredweight of any charges or deductions
12 where applicable. The format shall be provided with clear language and with
13 no abbreviations, except where the abbreviation is spelled out elsewhere in the
14 statement.

15 § 2925. MINIMUM PRODUCER PRICE REGULATION

16 (a) The Commission may make, rescind, or amend an order regulating
17 minimum producer prices if the Commission finds that the ~~federal milk~~
18 ~~marketing order~~ Federal Milk Marketing Order 1 minimum price is adequate or
19 inadequate as the case may be to ensure that the price paid to dairy producers
20 will cover the costs of milk production and provide a reasonable economic

1 return to dairy producers sufficient to ensure a stable milk production and
2 distribution system in Vermont.

3 (b) Guidelines for setting prices. In setting equitable minimum prices, the
4 Commission may investigate and ascertain what are reasonable costs and
5 charges for producing, hauling, handling, processing, and any other services
6 performed in respect to Vermont raw milk production and the processing and
7 manufacture of Vermont dairy products. The Commission shall take into
8 consideration the balance between production and consumption of dairy
9 products, the costs of production and distribution, the purchasing power of the
10 public, the positioning of Vermont milk and dairy products within and outside
11 the Vermont marketplace, and the price necessary to yield a reasonable return
12 to ~~the~~ Vermont producers, handlers, and distributors. The Commission shall
13 also take into account the marketing conditions and costs of all differing
14 market sectors, including organic and conventional raw milk production,
15 processing, and manufacture. The Commission may set the equitable
16 minimum price according to market sector, such as a separate price for organic
17 milk production or any other type of production.

18 (1) Minimum producer prices may be based on the producer prices
19 prevailing in ~~federal market order~~ Federal Milk Marketing Order I and reflect
20 as accurately as possible the costs of production in Vermont. The prices
21 should also reflect, within constitutional limitations, the competitive position

1 of Vermont producers within the market order. Minimum producer prices
2 should also reflect the actual rate of return received by distributors or handlers,
3 whichever is greater, as determined by the Commission.

4 (2) Minimum producer price regulation shall in part specifically include
5 an investigation and hearing procedure that accounts for the costs of trucking
6 and hauling Vermont raw milk, and the manner of payment to producers under
7 Federal Milk Marketing Order 1 regulation.

8 (3) Minimum producer price regulation may include tiered payments to
9 producers, based on differing producer costs or production or other criteria
10 deemed appropriate by rule by the Commission, including accounting for the
11 unique costs of environmental compliance incurred by Vermont handlers in
12 complying with the State water quality initiative and other environmental
13 requirements.

14 ~~(2)~~(4) Minimum retail prices should reflect the lowest price at which
15 milk purchased from producers can be received, processed, packaged, and
16 distributed by handlers and distributors at a just and reasonable return.

17 ~~(3)~~(5) In establishing minimum producer and retail prices, the
18 Commission shall make applicable findings regarding the competitive position
19 of producers and their costs, handler and distributor costs, reasonable rates of
20 return, and actual handler and distributor rates of return.

1 (c) Prices so established need not be uniform in all markets and may be
2 changed from time to time after such notice and public hearing as deemed by
3 the Commission to be in the public interest.

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

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

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

11 (e) ~~Nothing in~~ The Commission may disburse the proceeds of the minimum
12 producer price directly to individual producers who are subject to the price
13 regulation from the equalization pool and fund established by section 2938 of
14 this title, or collectively to handlers for their disbursement to such regulated
15 producers. If distributed to and disbursed collectively by them, producer
16 cooperatives shall pay the full individual amount of the minimum producer
17 price due to each member producer whose milk is subject to the price
18 regulation, provided that this section shall not otherwise be construed to
19 prohibit a producers cooperative from otherwise blending the proceeds from
20 the sale of its milk in ~~all markets and all classifications, and distributing such~~
21 ~~to its members in accordance with the contract with its members, or from~~

1 ~~making deductions from sums due members of such sums as may be~~
2 ~~authorized by the membership to be so deducted~~ accordance with federal law.
3 The proceeds of the minimum producer price distributed to producers shall be
4 shown separately on each producer’s payment statement.

5 (f) The Commission shall conduct a referendum among producers subject
6 to an order regulating price to determine whether the issuance or amendment
7 of an order establishing a minimum producer price, including any provision
8 with respect to milk supplies under subsection (d) of this section, is approved
9 by producers. The referendum shall be held in a timely manner as determined
10 by rule of the Commission.

11 (1) An order or an amendment to an order shall be deemed approved by
12 producers if the Commission determines that it is approved by at least two-
13 thirds of the voting producers who, during a representative period determined
14 by the Commission, have been engaged in the production of milk the price of
15 which would be regulated under the proposed order or amendment.

16 (2) The Commission may adopt rules establishing the procedure or
17 process for the conduct of a referendum. The Commission’s referendum rule
18 shall, at minimum, provide for the Commission to supply individual
19 referendum ballots to all producers who, during a representative period
20 determined by the Commission, have been engaged in the production of milk
21 the price of which would be regulated under the proposed order or amendment.

1 The ballot shall include and describe the terms and conditions of the proposed
2 order or amendment and shall provide specific notice that the producer may
3 return the ballot to the Commission in order to register the Commissioner’s
4 approval or disapproval of the proposed order or amendment.

5 (3) A cooperative of producers shall not be authorized to block vote for
6 its producer members in any referendum conducted under this chapter.

7 (4) A vote disapproving an amendment to an order regulating price shall
8 not invalidate the order as a whole.

9 (g) A minimum price order shall include provisions that exempt producer-
10 handlers, as defined by the Commission. Such exemption may be aligned with
11 the exemption provided by the applicable federal milk marketing order as
12 deemed appropriate by the Commission.

13 (h) A minimum price order shall include provisions that eliminate any
14 impact on the Child Nutrition and WIC Reauthorization Act of 2004, or other
15 charitable organizations, as deemed appropriate by the Commission after
16 notice and comment rulemaking under this chapter.

17 (i) Notwithstanding the requirements of section 2929 that the Commission
18 hold a public hearing prior to finalizing an order under this chapter, the
19 Commission is authorized to issue an emergency order without first holding a
20 public hearing in order to relieve critical conditions on dairy farms, based on
21 examination of current economic forces affecting producers, probable trends in

1 production and consumption, the level of dairy farm prices in relation to costs,
2 and the financial conditions of dairy farmers. Within 60 days after issuing the
3 emergency order, the Commission shall convene a public hearing and
4 formalize the issuance of the order according to the requirements of this
5 chapter.

6 (j) The legal obligation to pay a minimum producer price under this chapter
7 shall be determined solely by the terms and purpose of the order issued by the
8 Commission without regard to the physical or legal location of the transfer of
9 title, possession, or any other factors not related to the purposes of the order
10 and this chapter.

11 ~~(e)~~(k) This chapter shall apply to milk produced outside the State subject to
12 regulation by the State in the exercise of its constitutional police powers. Any
13 sale or purchase by distributors or handlers of such milk within this State at a
14 price less than a regulated minimum price shall be unlawful.

15 * * *

16 § 2929. POWER TO MAKE ORDERS AND CONDUCT HEARINGS;

17 RULES

18 (a) In administering this chapter, the Commission shall have the power to
19 make orders under this section or other sections in this chapter, conduct
20 hearings, subpoena, and examine under oath producers, handlers, and
21 distributors; their books, records, documents, correspondence, and accounts;

1 and any other person it deems necessary to carry out the purposes and intent of
2 this chapter.

3 (b) Any order issued under this chapter shall only be made final after a
4 public hearing and after publication of a proposed order for public review and
5 comment for 30 days following the publication of the proposed order.

6 (1) The Commission shall provide notice of the hearing on the proposed
7 order to interested persons in accordance with the applicable provisions of 3
8 V.S.A. § 809(b), and to the public by posting notice on its website and by
9 publication of an advertisement in the newspapers of record approved by the
10 Secretary of State under 3 V.S.A. § 839 general circulation within the State.

11 The notice shall include proposed regulatory procedures for administration of
12 the pricing order, as appropriate, and otherwise provide sufficient notice and
13 explanation of the potential operation and impact of the order, including
14 proposed findings and conclusions consistent with the requirements of section
15 2925 of this chapter.

16 (2) Interested persons shall not be considered “parties,” and, except as
17 otherwise specifically provided by subsection (c) of this section, the provisions
18 of 3 V.S.A. chapter 25 relating to contested cases shall not apply to the
19 procedure for the conduct of the hearing, the issuance of a proposed pricing
20 order, or the promulgation of a final order. The hearing on the proposed order
21 shall be held in accordance with the applicable provisions of 3 V.S.A. § 840(c)

1 and (d), other than the provisions relating to notice and the requirements of 3
2 V.S.A. § 832a. The hearing procedure shall provide for the establishment of a
3 formal record of sworn evidence received, matters officially noticed, questions
4 and offers of proof submitted by interested persons, and any proposed findings
5 presented.

6 (3) The Commission shall allow all members of the public to attend
7 each of its hearings unless the hearing is for the sole purpose of considering
8 information to be treated as confidential under this chapter or other provision
9 of law.

10 (A) The Commission shall make all reasonable efforts to ensure that
11 the location of each hearing is sufficient to accommodate all members of the
12 public seeking to attend.

13 (B) The Commission shall ensure that the public may safely attend
14 the hearing, including obtaining such resources as may be necessary to fulfill
15 this obligation.

16 (C) The Commission shall provide time at every hearing for the
17 public to provide input, except when the hearing is for the sole purpose of
18 considering confidential information.

19 ~~(3)~~(4) The final order shall contain separate findings of fact and
20 conclusions responsive to the requirements of section 2925 of this chapter and
21 based exclusively on the evidence presented at the hearing and on matters

1 officially noticed. The final order shall also provide specific response to any
2 submissions filed by interested persons, including proposed findings. The final
3 order shall be issued again in accordance with the procedural requirements of
4 subdivision (1) of this subsection.

5 ~~(4)~~(5) The Commission shall hold at least one formal deliberative
6 meeting before the issuance of a proposed or final order. Except as provided in
7 section 2922 of this chapter with respect to affirmative votes, a majority of the
8 Commission shall constitute a quorum for these deliberative meetings, as well
9 as for any hearing conducted in accordance with this section.

10 (c) The procedure relating to ex parte communications set forth in 3 V.S.A.
11 § 813 shall apply as the Commission deems appropriate to the development of
12 a proposed order and to the deliberation and issuance of a final order.

13 (d) The Commission shall adopt rules of procedure for the conduct of a
14 hearing and issuance of a proposed and final pricing order under this chapter.
15 Such rules may be adopted as emergency rules in accordance with 3 V.S.A.
16 chapter 25. The Commission may adopt and enforce such reasonable rules and
17 procedures as are deemed necessary to carry out the administration of the
18 provisions of this chapter.

19 § 2931. REHEARING OF ORDERS AND DECISIONS

20 (a) Within 20 days after any final order or decision has been made by the
21 Commission, any party to the action or proceeding before the Commission, or

1 any person directly affected thereby, may apply for a rehearing in respect to
2 any matter determined in the action or proceeding, or covered or included in
3 the order, specifying in the motion for rehearing the ground therefor. The
4 Commission may grant the rehearing if in its opinion good reason for rehearing
5 is stated in the motion.

6 (b) The motion shall set forth fully every ground upon which it is claimed
7 that the decision or order complained of is unlawful or unreasonable. No
8 appeal from any order or decision of the Commission shall be taken unless the
9 appellant shall have made application for rehearing as provided in this section.
10 When the application has been made, no ground not set forth in the application
11 shall be urged, relied on, or given any consideration by the court, unless the
12 court for good cause shown allows the appellant to specify additional grounds.

13 § 2932. DETERMINATION OF MOTION FOR REHEARING

14 Upon the filing of a motion for rehearing, the Commission shall within ~~ten~~
15 10 days either grant or deny the motion, or suspend the order or decision
16 complained of pending further consideration.

17 § 2933. APPEAL TO SUPREME COURT

18 When any application for a rehearing is denied, or if the applicant is
19 aggrieved at the decision on rehearing, the applicant may appeal to the
20 Supreme Court.

1 § 2935. PROHIBITION; ADMINISTRATIVE PENALTY; INJUNCTIVE

2 RELIEF

3 (a) Any handler or distributor that buys, offers to buy, sells, or transfers
4 ownership of milk in any form at any price or for any consideration ~~which~~ that
5 is less than the price or prices set by ~~rule~~ order of the Commission may be
6 assessed an administrative penalty by the Secretary, in accordance with the
7 standards and procedures set forth in sections 15, 16, and 17 of this title, in an
8 amount not to exceed \$10,000.00 for each violation and not to exceed
9 \$50,000.00 per day for multiple violations in a single transaction or a series of
10 related transactions.

11 (b) The Commission, through the Secretary, may seek appropriate
12 injunctive relief to enforce the provisions of this chapter.

13 § 2936. REPORTS FROM MILK HANDLERS; RELEASE OF

14 INFORMATION BY HANDLERS

15 (a) In order that the Commission has adequate information available to
16 proceed under this chapter, as a condition of a handler's license, the
17 Commission may require from a handler:

18 (1) information on a time schedule established by the Secretary from
19 handlers showing the prices paid to purchase various forms of milk from
20 Vermont producers, the costs of production, processing, transporting,

1 distributing, and marketing milk, together with any other information deemed
2 necessary and relevant by the Commission; and

3 (2) that each milk handler licensed pursuant to section 2721 of this title
4 execute a release with the ~~federal market order~~ Federal Milk Marketing Order
5 1 administrator authorizing the Secretary and the Commission to obtain all
6 production data ~~which~~ that in the discretion of the Secretary and Commission
7 is deemed relevant and necessary.

8 (b) The Commission shall keep information received under this section
9 confidential except as necessary for the adoption of rules or enforcement
10 actions.

11 § 2937. PERIODIC REPORT

12 The Commission may report as needed on its activities to the House
13 Committee on Agriculture and Forestry and Senate ~~Committees~~ Committee on
14 Agriculture.

15 § 2938. FUND ESTABLISHED

16 The Vermont Milk Commission Fund is established in the State Treasury
17 and shall be administered by the Secretary of Agriculture, Food and Markets in
18 accordance with the provisions of 32 V.S.A. chapter 7, subchapter 5, except
19 that interest earned on the Fund shall be retained in the Fund. Proceeds from
20 this chapter shall be deposited into the Fund. The Fund shall be used as

1 necessary for the purposes of this chapter. The Treasurer shall distribute funds
2 as directed by the Commission.

3 Sec. 2. VERMONT MILK COMMISSION

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

13 Sec. 3. DAIRY RISK MANAGEMENT ASSISTANCE PROGRAM

14 In addition to the unexpended funds appropriated under 2022 Acts and
15 Resolves No. 83, Sec. 68 for use to implement the Dairy Risk Management
16 Assistance Program, \$800,000.00 is appropriated to the Agency of Agriculture,
17 Food and Markets from available American Rescue Plan Act (ARPA) -
18 Coronavirus State Fiscal Recovery Funds to fully fund the Dairy Risk
19 Management Assistance Program in fiscal year 2023.

20 Sec. 4. EFFECTIVE DATE

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