



TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY: RECOMMENDATIONS

December 17, 2021

Required by 2020 Acts and Resolves No. 129, Sec. 31

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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.

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 & General Affairs

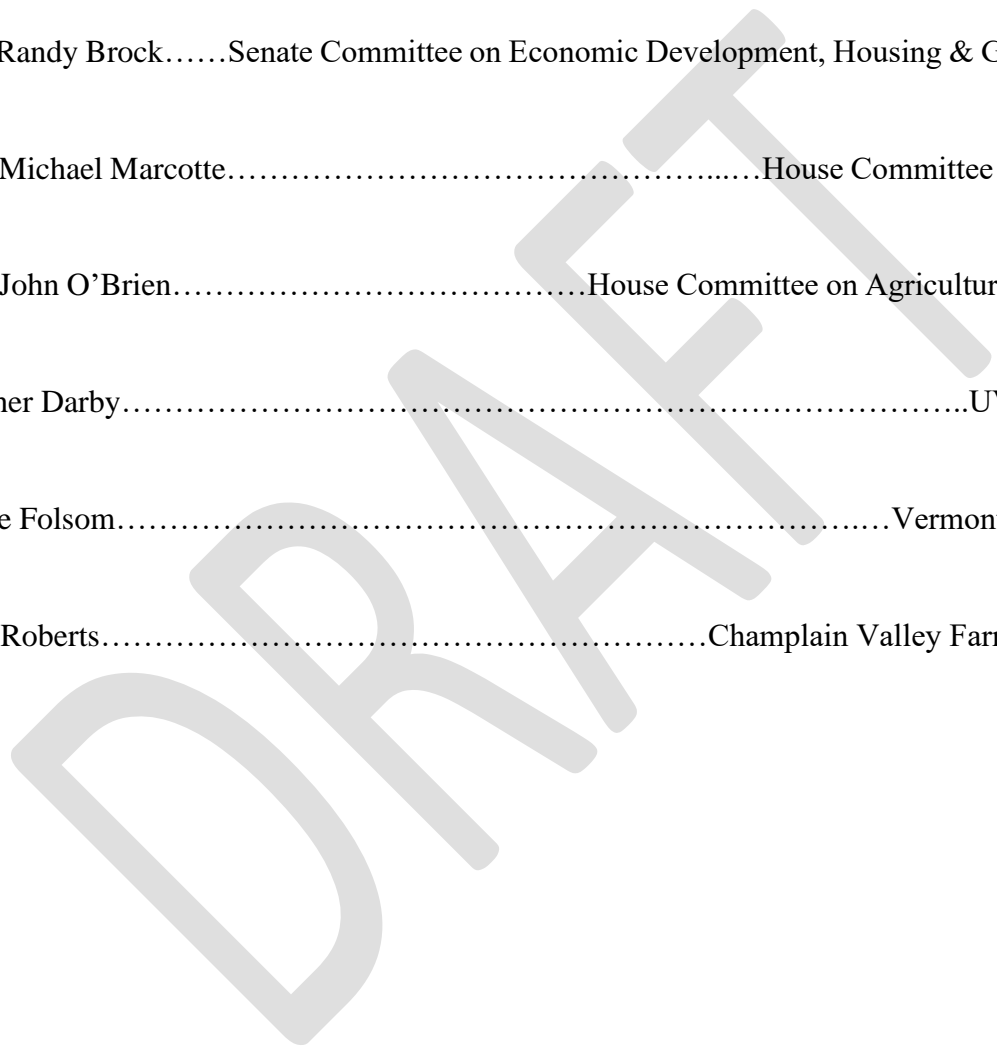
Rep. Michael Marcotte.....House Committee on Commerce

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

Heather Darby.....UVM Extension

Jackie Folsom.....Vermont Farm Bureau

John Roberts.....Champlain Valley Farmer Coalition



III. OVERVIEW

Dairy farming is integral to the economy, culture, and landscape of Vermont. The sale of dairy products accounts for over 65 percent of agricultural sales in Vermont and generates over \$500 million in annual revenue in the State. In total, the dairy industry in Vermont contributes approximately \$2.2 billion in economic activity to the State each year. The national image of Vermont of bright foliage and rolling pastures is the landscape of this State because over 50 percent of the farmland in Vermont is used for dairy farming or related activities. Moreover, the beauty of the landscape belies the strength and character of the people who work the fields and milk the cows. Simply, dairy farming is the core, the blood, and the bones of Vermont.

Despite its central importance to the State, the industry of dairy farming in Vermont is failing. In the year 2000, there were approximately 1,600 dairy farms in the State. In 2022, there likely will be less than 600 dairy farms in Vermont—an almost 60 percent loss. This loss of farms poses a real threat to Vermont's historic core and its rural economy, character, and working landscape. The loss of farms is also of concern for an additional and relatively new reason. Amidst the dislocating loss of farm operations, a vital and diverse in-state, vibrant, and market-leading Vermont dairy products manufacturing sector has emerged. This development has transformed the market channel for Vermont dairy farmers' raw milk product, along with the industry, itself.

Historically, as much as 90 percent of the State's raw milk production was marketed and sold out-of-state, primarily as the anchor supply for Boston fluid milk plants. This meant that as little as 10 percent of the State's raw milk production was utilized in-state by Vermont milk companies. Today, the majority of Vermont raw milk no longer crosses State boundaries. Instead, Vermont dairy farms are supplying Vermont milk plants. Led by market pathfinders Ben and Jerry's ice cream and Cabot cheese, new and expanded Vermont milk plants are producing a substantial volume and variety of high-value manufactured dairy products, all made from Vermont raw milk. Vermont is also developing a leading niche of high quality farmstead dairy products operations.

In 2019, pre-pandemic, Vermont dairy farms provided 1.65 billion pounds of the milk supply utilized by Vermont milk plants. This amounted to 81.4 percent of the plants' pooled raw product supply. This new supply pattern means that only a minority of Vermont milk production is now marketed out-of-state, in marked contrast to the past. This new supply pattern also means that Vermont dairy farms have assumed a new role, as critical suppliers for the market-leading Vermont dairy products manufacturing industry.

Thus, a basic and fundamental structural flaw has come to define the Vermont dairy industry. At the same time that the industry's manufacturing sector has grown and thrived, the upstream raw milk supply sector has, and continues, to hemorrhage farming operations. Vermont dairy farmers still cannot control the price of their raw product supply and have been unable to capitalize on the success of their customers. This structural flaw has also come to exist even with the long-standing presence of a comprehensive federal pricing regulatory program and amidst consolidation and vertical integration of dairy cooperatives that was intended to increase producer market power and control over product pricing.

The primary reason for the exit of dairy farmer operations is that Vermont dairy farmers still cannot control the price of their raw product supply. The fundamental cause is the increasing impotence of the federal Milk Market Order (FMMO) program to establish sustainable minimum pay prices for dairy farm producers. The FMMO program was specifically implemented to redress the significant imbalance between dairy farmers and their customers, and the lack of farmer control over their product pricing. The program was designed to set minimum pay prices that would ensure market and producer stability.

Yet for many years and, increasingly today, under the FMMO's complex formula, the regulated minimum price for milk produced by Vermont dairy farms is set at an amount below the cost of production. In addition, the pricing formula has yielded such volatile producer pricing as to actually cause harm rather than benefit for farm operations. Moreover, the regulation has allowed cooperatives, unlike proprietary companies, to impose unlimited fees and surcharges as costs of marketing and transporting member milk, thereby further reducing pay prices.

The General Assembly determined there is a need for bold and innovative State action in the face of the 60 percent hemorrhaging loss of the State's dairy farm operations over the past 20 years, and in the face of the increasing impotence of federal regulatory oversight. During the 2020 legislative session, the Vermont General Assembly enacted 2020 Acts and Resolves No. 129, Sec. 31 (Act 129) to improve the viability of dairy farming in the State.

Act 129 required the Department of Financial Regulation (DFR) to assess the long-term sustainability of Vermont dairy farming under the existing FMMO pricing system, current market conditions, and dairy cooperative operation. Once DFR issued its assessment, Act 129 further required the creation of a Task Force to Revitalize the Vermont Dairy Industry (Task Force) to develop legislation to revise dairy pricing and other market regulation in the State to improve the viability of Vermont dairy farming.

DFR issued its assessment report on January 15, 2021. The Department concluded that the Vermont dairy industry is struggling, primarily as a result of the imbalance between high costs of production and low FMMO minimum prices, but also compounded by the COVID-19 pandemic. DFR concluded that changes to the federal market order could help ensure better prices for Vermont farmers. In addition, DFR asserted that it is worth considering efforts to supplement the market order, including risk management programs and State milk pricing, such as state milk marketing orders.

The Department also asserted that risk management could be an important tool to help ensure the stability of the dairy industry. DFR concluded that a Vermont milk pricing order likely could be structured to withstand legal challenge. However, the Department did not take a position on whether a State milk pricing order should be implemented, deferring the analysis and decision on State pricing to experts and stakeholders in the dairy industry.

In the intervening time between the DFR report and commencement of the Task Force, an additional significant development occurred. In 2021, federal, congressional action that made available once-in-a-generation funding to states and businesses for infrastructure improvements. The availability of this substantial funding and its broad application create an almost unprecedented opportunity to take short-term steps that can effectively stabilize the Vermont

dairy industry while exploration continues to develop the required, bolder and innovative longer-term solutions contemplated by the General Assembly's charge to the Task Force.

On May 3, 2021, the Task Force convened consisting of multiple legislators and experts in the dairy industry or farming in general. The Task Force held 10 meetings, during which it heard from multiple witnesses representing farms, cooperatives, product manufacturers, regulators, marketers, and insurers. The Task Force compiled the input and recommendations of witnesses and offers multiple categories of initiatives that it recommends the State pursue to stabilize dairy farming in Vermont. Where appropriate, the recommendations include short-term and long-term initiatives. In addition, the recommendations are not limited to actions that Vermont State government may take, but also actions the federal government and businesses can implement to support dairy farming in Vermont.

The Task Force believes that the State should take action and implement these recommendations to stabilize and enhance the dairy industry in Vermont. Some of the Task Force recommendations will take time to implement but, if implemented, could provide substantial, ongoing support to the dairy industry. Other Task Force recommendations could be implemented quickly and would provide farmers with immediate, consequential support that could help farms stay in business until long-term remedies are implemented. The State has lost almost 60 percent of Vermont dairy farms in the past 20 years. Every action should be explored, and every effort made to ensure that the State does not lose more.

IV. TASK FORCE RECOMMENDATIONS

A. RISK MANAGEMENT

1. State Payment of Premiums for Farmer Participation in Risk Management Programs

The U.S. Department of Agriculture (USDA) operates three programs to mitigate risks to farmers from price volatility in the milk market—the Dairy Margin Coverage Program, the Dairy Revenue Protection Program, and the Livestock Gross Margin Program. The Task Force finds that these programs offer a short-term capability to mitigate the shortfall in producer pricing. While the Dairy Margin Coverage Program is serving many Vermont dairy farms, the other two programs are undersubscribed in the Vermont dairy farm community

The Dairy Margin Coverage Program (DMC) is a voluntary risk management program that pays farmers when the difference (the margin) between the national price of milk and the average cost of feed falls below a level selected by program participants. The Dairy Revenue Protection Program (DRP) is designed to insure against unexpected declines in the quarterly revenue from milk sales relative to a guaranteed coverage level. The expected revenue is based on futures prices for milk and dairy commodities, and the amount of covered milk production elected by a dairy producer. The Livestock Gross Margin Insurance Plan for Dairy Cattle (LGM) provides protection when feed costs rise or milk prices drop and can be tailored to any size farm. Gross margin is the market value of milk minus feed costs. LGM uses futures prices for corn, soybean meal, and milk to determine expected gross margin and actual gross margin.

DMC, DRP, and LGM require farmer participants to pay premiums for participation in the programs. The Task Force learned that in other states, specifically Virginia and Maryland,

State government is paying the premiums for farmers participating in DMC. The Task Force discussed with crop insurers the possibility of Vermont paying the premiums for all Vermont farmers participating in DMC, DRP, and LGM. The Task Force recommends that the State pay the costs of farmers to participate in the USDA risk management programs to incentivize greater participation in the programs and to enable these programs to more effectively serve as a short-term method to provide price enhancement and stability to dairy farmers.

The costs to the State of providing this assistance will depend on how many farmers participate and at what level the State commits to provide assistance, including whether the State will reimburse farmers for participation in prior years or only for prospective years. The Task Force has estimated the cost of the State offering to cover premiums for Vermont farmers participating in DMC. The estimate is of proposed payment of the premiums for eligible Vermont dairy farmers' production at the \$9.50 margin coverage level, up to the 5 million pounds of milk production cap established as "Tier 1" in the federal program. The estimate is based on an accounting of the DMC eligible annual Vermont milk production.

The accounting of milk production is drawn from 2020 dairy producer payroll data provided by the FMMO One Administrator. The estimate of additional Vermont non-FMMO One producer milk is based on testimony received from the Vermont Agency of Agriculture, Food and Markets (AAFM). The following is the Task Force estimate:

Accounting of Eligible VT Milk Production, Up to 5 Million Tier 1 Cap

Total FMMO One pooled milk, up to the 5 million cap:	1,137,710,217 lbs. ¹
Estimated additional Vermont non-FMMO One producer milk:	200,000,000 lbs.
Total estimated VT milk production, up to a 5 million cap:	1,337,710,217 lbs.

Estimated Annual and Total Cost, If All Eligible Milk is Enrolled

The federal program allows enrollment of 95% of eligible milk at the \$9.50/cwt coverage rate, up to the Tier 1 5-million-pound cap. The premium cost is \$0.15/cwt. Using these figures, the estimated cost for the State to cover premiums for all eligible milk is:

95% of eligible 1,337,710,217 pounds =	12.7 mil cwt
	x \$0.15/cwt premium cost for \$9.50 coverage
Annual premium cost	\$1.9 mil.
Total cost for two-years	\$3.8 mil.

The Task Force recommends that the Joint Fiscal Office work AAFM, USDA, and crop insurance companies to confirm the Task Force costs estimate for DMC coverage and to develop estimates of the costs to the State to provide assistance for farmer participation in the DRP and LGM assistance programs. Based on recent, relatively-low Vermont farmer participation in those programs, costs should be substantially less than the cost of DMC assistance.

¹ Milk pooled by VT FMMO One pool producers with production under 5 million pounds annually: 587,710,217 pounds. Milk pooled by VT FMMO One pool producers with production over 5 million pounds annually, up to the 5 million cap: 550,000,000 pounds. Total Eligible FMMO One pooled milk, up to the 5 million cap: 1,137,710,217 pounds.

The Task Force also notes that the DMC enrollment period for 2022 has been extended to February 18, 2022. This should allow the State sufficient time to act to implement the program for coverage of 2022 milk production as well as for 2023 production. The Task Force further proposes that eligibility for State payment of risk management premiums be conditioned on dairy producers being certified by the AAFM and the Agency of Natural Resources as being in compliance with agricultural water quality requirements.

2. Increased Farmer Participation

As noted, the Task Force learned that Vermont farmer participation in two of the USDA risk management programs has been low; for example, only three Vermont farmers participated in DRP in 2021. The Task Force recommends that the House Committee on Agriculture and Forestry and the Senate Committee on Agriculture explore why farmers are not participating in these programs in order to determine whether more than the offering of State payment of premiums is necessary to incentivize increased participation in the programs. Unless currently unknown concerns warrant that Vermont farmers should not participate, the Task Force recommends that the State take additional efforts to increase long-term participation by Vermont farmers in USDA risk management programs. State efforts could include education and outreach or AAFM facilitators to assist farmers in navigating program requirements.

3. Farm Bill Reauthorization of Risk Mitigation Program

The DMC, DRP, and LGM programs provide important insurance and stability for dairy farmers participating in them. Participation requires that these programs exist and are adequately funded in order to provide assistance. Consequently, DMC, DRP, and LGM must be reauthorized or renewed when current program terms expire. For example, the DMC program is scheduled to expire after 2023. The AAFM, the Vermont congressional delegation, and the Vermont Milk Commission should advocate for the reauthorization of DMC in the 2023 federal Farm Bill. Likewise, the Task Force recommends continuation of the DRP and LGM programs. If reauthorized for extended terms, these programs will provide dairy farmers with proven, long-term support.

B. PRICE STABILIZATION AND ENHANCEMENT

1. State Assistance for Farmer Participation in Risk Management

Farmers participating in USDA risk mitigation programs are guaranteed a specific rate of return if pricing under the milk market order or other specified conditions occur. These guarantees can be significant and provide farmers with insulation against market volatility. Thus, the risk management programs are not only insurance against disaster but also a price stabilization tool. The Task Force recommends that the State pursue the risk management recommendations in this report as short-term price stabilization tools.

2. FMMO Reform in the 2023 Farm Bill

Regulatory pricing established for Vermont dairy farmers under the FMMO program continues to be the underpinning of the industry's market structure, conduct, and performance. Yet despite the centrality of the regulation, the FMMO pricing series is both insufficient to ensure the stability and viability of the Vermont dairy industry and also has become so highly volatile as to

cause harm to industry viability. The FMMO pricing program must be reformed, so that it operates again to provide Vermont dairy farmers with a sustainable regulated minimum milk pricing environment.

The FMMO program was implemented almost 90 years ago and, over most of that time, the program served Vermont dairy farmers well. However, the nation's dairy industry has changed since the 1970s from a fluid-based industry to a manufactured products industry, and the FMMO program has not been updated to reflect this change. As a result, the program no longer reflects the realities of either the national or regional dairy markets. Comprehensive reform is necessary to modernize the program and account for the significant changes that have overtaken the regulated industry.

The Task Force is not alone in this recommendation. Dairy farmer advocates testified to Congress in September 2021 requesting FMMO reform, including potential legislation to override current market order provisions. The American Farm Bureau also supported FMMO reform and issued priorities to pursue in such reform, but the Bureau supports following the traditional process of USDA market order amendment, which involves public hearings and farmer participation. In 2018, the Vermont Milk Commission recommended FMMO reform, including amendment to the pricing of fluid milk. And, in its Act 129 report to the Vermont General Assembly, DFR concluded that the FMMO system does not ensure adequate returns for Vermont dairy farmers, and changes to the pricing formulas may help ensure more adequate prices for all of Vermont's dairy farmers.

The pending reauthorization of the federal Farm Bill in 2023 provides timely opportunity for the needed reform of the FMMO program. The Task Force recommends that the Vermont congressional delegation, the AAFM, and the Vermont Milk Commission advocate for amendments to the 2023 Farm Bill that would reform the FMMO pricing series so that it again promotes orderly marketing conditions and provides dairy farmers with equitable and predictable pricing. Reform should focus on ensuring that the regulatory program, together with operation of the marketplace, operates in a rationale manner so that farmers' costs of production are covered and that they are provided a reasonable return on investment and profit. Analysis of costs of production should include all costs to the farm, not just feed or livestock costs, but also costs of hauling and regulatory compliance.

Unfortunately, the Task Force received testimony from many industry and government leaders indicating that there is at best a low probability that the necessary comprehensive FMMO reform will occur as part of the 2023 Farm Bill. This testimony does not detract from the Task Force's recommendation that federal advocacy be actively pursued. The testimony does accentuate, however, the additional need for other concerted effort to identify State action that may be administered to achieve a long-term solution to the producer pricing problem and provide price predictability and a general economic stability for Vermont dairy farmers, either together with or independent of the FMMO. Such a long-term solution would also be directly responsive to the General Assembly's original charge to the Task Force.

3. State Regulatory Milk Market Order Pricing Program

The first of these possible State actions is the implementation of a State-based milk market order pricing program. A number of states have implemented similar individual milk market

regulatory programs. These states include Virginia, Montana and Maine. Other state order programs are administered for the western part of New York and a part of Pennsylvania. For many years and until only very recently, California's dairy industry, which produces 20 percent of the nation's milk supply was regulated solely by operation of a state-based milk price order program.

These programs all act to regulate the price paid by in-state milk plants for their in-state raw milk supplies, procured from in-state dairy farm suppliers. Some of the current programs, like the past California program, regulate the entire amount paid by in-state milk plants to their in-state farm suppliers. Others establish the regulated amount as a premium assessment added to the current price provided under the FMMO program, or as an "over-order" price.

The programs employ notice and comment administrative rule-making procedures to establish and amend the pricing regulations. The programs also provide on-going oversight, monitoring and audit of administration of the price regulation. The programs additionally conduct follow up hearings as needed to make administrative adjustments to pricing regulations.

Vermont established one of the nation's first state Milk Control Boards in the 1930s. The Vermont Milk Commission currently exists with statutory authority under 6 V.S.A. § 2924 to:

establish an equitable minimum or maximum price, or both, and the manner of payments, which shall be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers.

The Commission also has current authority under 6 V.S.A. § 2924 to establish by order an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use of the milk.

Based on this existing authority, the Task Force could recommend that the Vermont Milk Commission exercise its current pricing authority with the objective of issuing a State over-order price regulation. For many years, however, the Commission has not exercised its authority to establish equitable minimum prices, and the Commission would likely need a legislative directive to compel it to exercise its authority. The Task Force, however, concluded that it is premature to recommend that the General Assembly require the Milk Commission to initiate a rule-making procedure.

As described in the Overview to this report, the market channel for Vermont raw milk and its use by Vermont milk plants has been completely reconfigured over the past 40 years. Vermont milk plants now process and manufacture a substantial volume of milk in-state, which amounted to 1.65 billion pounds in 2019, pre-pandemic. Vermont dairy farms supplied over 80 percent of the plants' raw product supply. In addition to now serving as chief in-state supplier, this new supply pattern also means that only a minority of Vermont milk production pooled is now marketed out-of-state. This also is in marked contrast to the past, historic pattern of the export of 90 percent of Vermont's raw milk production to the Boston fluid milk marketplace.

This transforming change raises questions about how a Vermont milk market over-order price regulation might best be devised, as compared to how such a regulation might have been structured by the Vermont Milk Commission in the past. Through Legislative Counsel and

Leadership, the Task Force will obtain a scholarly academic legal opinion to advise on these questions. The Task Force will advance its assessment of this option after receipt of the legal opinion, and then supplement this Report and its recommendations to the General Assembly at that time.

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4. Legal Inquiry and Review of State Regulatory Pricing or Raw Milk Use Tax

The second option under consideration is the provision of dairy farm producer subsidy payments paid out of the State's general fund. These payments would be supported in part by the statutory imposition of a handling fee on raw milk produced in Vermont and utilized by Vermont milk plants. The concept for this second option is derived from testimony received by the Task Force about the success and effectiveness of Maine's innovative tiered producer payment program.

The Maine program provides for payments to be made to dairy farm producers from the Maine general fund in varying amounts. These varying amounts reflect four different "tiers" of production size. The different tiers represent the differing size of operation and their differing costs of production across the State as determined by a study conducted by the University of Vermont and then verified by the legislature. The payments make up the difference between each producer's FMMO price and the applicable producer tier target price. The payments thus adjust countercyclically to the monthly increases and decreases in change to the FMMO pricing series. This also means that no subsidy payment is made when the FMMO price exceeds a producer's tiered target price.

The payments are financed in part by the proceeds of a handling fee on in-state package fluid milk sales, with the proceeds deposited into the general fund. The fixed amount of the handler fee is set in statute, and the amount collected also adjusts countercyclically to the FMMO pricing series. Additional general fund dollars have often been required to cover the cost of the producer payment program. This occurs when the amount of the handler fee is insufficient, over a given period, because of often, prolonged downturns in the FMMO pricing series that are not made up by operation of the statutory formula for the fee's countercyclical adjustment.

The Maine testimony also described how the tier payment program works in complement with the state's over-order price regulation. The Task Force is also considering how this dual complementary function of a tier payment program and over-order regulatory program might best be adapted for application to the Vermont dairy industry.

Configuration of the Vermont dairy industry, however, is quite different than that of the Maine industry, which presents issues of how the Maine tier program, either separately or in complement with a regulatory pricing program, can best be adapted to operate effectively for Vermont. The Task Force will also obtain an academic legal opinion to advise on these issues, along with the issues related to the over-order price regulation option. The Task Force will again advance its assessment of this tier payment and handling fee option after receipt of the legal opinion, and then supplement this Report and its recommendations to the General Assembly at that time.

5. Fee on Retail Sale of Packaged Milk Products for Advertising Funding

The Task Force recommends that the General Assembly take testimony to determine if a five to ten cent fee on packaged, fluid milk sold in the State would be sufficient to promote the Vermont dairy industry and its products. The fee would be on any fluid product labeled as milk, including plant-based beverages labeled as milk, such as almond milk. The tax would be collected by the product distributor upon the distributor's receipt of products or by a manufacturer if the product is directly distributed by the manufacturer. The fee would not be directly imposed on consumers.

Data needs to be collected to determine the amount of revenue that could be generated and the costs of collection and administration of the fee. If the revenue to be generated was sufficient, the fee could be used to expand the marketing of the beneficial qualities of Vermont's dairy industry, such as quality and purity, and thereby increase the sale and value of Vermont dairy products. Advertising in other states could be used to emphasize that Vermont dairy products are high quality or premium products from regional producers.

C. INFRASTRUCTURE SUPPORT

Over the next several years, Vermont will receive unprecedented federal funds to support the economy and develop infrastructure. Specifically, in the coming fiscal year, Vermont has \$500 million in American Rescue Plan of 2021 (ARPA) funds available for appropriations. In addition, under the federal Infrastructure, Investment, and Jobs Act of 2021 (IIJA), Vermont will receive over \$2.1 billion between fiscal years 2022 and 2026 for several categories of infrastructure development, including water quality, air quality, carbon reduction, weatherization, and energy efficiency. With these funds, the General Assembly has a generational opportunity to invigorate the State economy, including the Vermont dairy economy.

1. Expansion of Assistance and Infrastructure Programs

The General Assembly should review existing financing programs available to dairy farmers or related businesses to identify where programs can be expanded or established to provide short-term assistance from available federal ARPA and IIJA funds. There are many opportunities that the State could explore such as establishing payment for ecosystem services programs that reward farmers for water quality or air quality. Similarly, existing assistance programs, such as the Working Lands Program or the Capital Equipment Assistance Program could expand eligibility to additional activities.

For example, the Task Force heard testimony regarding the difficulty some milk haulers have in accessing farms due to the condition of driveways or farm roads. Making additional funds available to stabilize or construct driveways will allow for better access by haulers and will reduce opportunities for haulers to deny pickup due to poor driveway or road conditions on a farm. In addition, construction or improvement of driveways will provide opportunity to improve water quality controls on farm roads and driveways, thereby serving two benefits.

Similarly, smaller farms that lack larger bulk tanks or adequate cooling systems require more frequent pickups by haulers. Providing financing for larger bulk tanks and cooling systems will allow a farm to hold more milk for longer, thereby reducing the number of truck trips to the farm. This recommendation would have the dual benefit of reducing emission from the multiple

truck trips. There are multiple other opportunities that the State could explore for use of the available federal ARPA and IIJA funds to support dairy farming in the State.

2. Funding of Grant Writers

The ARPA and IIJA funds directly appropriated to Vermont will be disbursed to recipients through State-based grant programs. In addition, ARPA and IIJA also authorized funding of competitive programs administered at the federal level. Accessing grants through state or federal programs can be time-consuming and difficult.

In 2020 Acts and Resolves No. 129, the General Assembly created the Rural Economic Development Initiative (REDI) to promote and facilitate community economic development in the small towns and rural areas of the State. A major component of REDI was the provision of technical assistance to small towns and businesses in rural areas in writing grants and accessing and completing the application process for identified grants or other funding opportunities. REDI provided this grant access assistance through funding grant writers at the Vermont Housing and Conservation Board (VHCB).

The grant writers at VHCB were funded with \$150,000 over two years. During those two years, the grant writers helped access \$2,342,445 for towns and businesses—a 15 to 1 return on investment. The REDI grant writers also assisted in pending applications for another \$2.5 million in assistance.

Vermont should do everything it can to ensure that the ARPA and IIJA funds it receives are utilized and not returned to the federal government. State farms and agricultural businesses should not lose out on opportunities to access federally administered funds due to the difficulty of the federal grant process. Funding grant writers, such as those funded by REDI, will help farms and agricultural businesses maximize access and use of the federal ARPA and IIJA funds.

D. TRANSPORTATION

1. Hauling Costs

Members of the Task Force noted that hauling costs are a significant cost borne by farmers. Dairy cooperatives require their members to pay the costs of hauling milk from the farm. The costs that a farmer will pay for hauling depends on the cooperative, the physical location of the farm, stop charges, and location adjustments, but, anecdotally, the current average cost for hauling is \$0.750 per hundredweight. For a farm producing millions of pounds of milk a year, these costs can be significant. For example, an AgriMark farmer milking 100 cows is paying \$2,500 per month to have milk picked up, and a DFA farmer milking roughly 150 cows is paying \$3,500 per month in hauling charges.

Proposals have been made in the past to shift the cost of hauling to processors, cooperatives, or purchasers. However, there has been resistance to such proposals from the dairy processing industry. In addition, there likely would be unintended consequences such as fee shifting or reduced fluid milk prices. More analysis of this issue is required over the long-term to determine recommended action. The Task Force recommends that the House Committee on Agriculture and Forestry and the Senate Committee on Forestry explore alternatives for shifting the costs of hauling from dairy farmers to other sources.

2. Highway Weights

Haulers have requested improved conformity of weight limits on interstate and State highways. Because of unique weight limits in Vermont, haulers can be limited in the trucks used for picking up at farms or making deliveries from processors. Conforming interstate weight limits with neighboring states will make hauling and deliveries more efficient and help reduce costs.

However, amending interstate highway weights can be difficult, may require federal approval, and requires analysis of increased impact and costs on State transportation infrastructure. The Task Force recommends that the Vermont Senate and House Committees on Transportation review conforming weight limits on Vermont highways with neighboring states in order to facilitate regional dairy hauling.

E. LABOR

The Task Force received testimony from multiple witnesses regarding the current labor shortage and how it is negatively affecting farm and dairy processing production. The Task Force heard specific concerns regarding the lack of qualified truck drivers for milk hauling and market delivery. In addition, concerns were raised about availability of labor for dairy processing plants and in warehouses for loading and off-loading dairy products.

1. Increased Commercial Driver License Assistance

The Vermont Department of Labor administers a program to provide funding for commercial driver license training. Assistance is available for obtaining a Class A license, a Class B license, or for an upgrade from Class B to Class A. The Task Force recommends that the House Committee on Commerce and the Senate Committee on Economic Development, Housing, and General Affairs explore ways to enhance the current Department of Labor program or promote its availability. The Task Force also discussed potential bonuses or additional financing for those participants committing to drive for a milk hauler or dairy processor.

2. Incentives; Housing or Bonuses

The Task Force recommends that the House Committee on Commerce, the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing, and General Affairs explore the possibility of providing incentives such as housing or bonuses to attract labor for Vermont farms or dairy processors. Similarly, the Task Force recommends exploring ways to incent labor and housing around schools in the State.

3. Apprenticeship Programs

Apprenticeship programs are a mechanism the Task Force recommends that the State explore to attract individuals to the farming profession and provide them with needed training and experience. The experience gained through an apprenticeship can help individuals gain permanent employment in farming or start a new farm. Apprentices also can serve as realistic candidates to assume ownership or operation of a farm as older farmers leave the profession, thereby helping to prevent farm loss.

There are existing agricultural apprenticeship programs operating today, most notably the Dairy Grazing Apprenticeship (DGA). The DGA is a non-profit organization that partners with established grazing dairy farmers, universities, community-based organizations, and other stakeholders to deliver work-based training in managed-grazing dairy production. The DGA is based in Wisconsin, but has over 200-approved mentor grazers in 15 states.

The State of Vermont could provide assistance to persons interested in entering DGA or similar apprenticeship programs. Funding needs would depend on the number of participants and the State share of funding, but the State could impose limits and control costs in initial years. If providing financial assistance to existing programs is not feasible, the AAFM and the Vermont Department of Labor could explore establishing a Vermont-based dairy apprenticeship program.

F. PURCHASING—STATE AGENCIES AND SCHOOLS

Current State statutes require State agencies to purchase agricultural products produced in Vermont when available and all other considerations are equal. However, members of the Task Force believe that State agencies are not purchasing significant amounts of Vermont processed milk. Similarly, schools in Vermont are providing students with milk and other dairy products processed out of state. The Task Force recommends the House Committee on Corrections and Institutions, the House Committee on Education, the Senate Committee on Institutions, and the Senate Committee on Education explore whether State agencies and schools are purchasing Vermont milk. If they are not, the Task Force recommend exploration of incentives that can be provided to increase State or school purchasing of Vermont milk.

G. PROCESSING CAPACITY

Fifteen years ago, it was estimated that 85 percent of the fluid milk produced in the State was shipped out of state for processing. In 2021, that number is much lower as approximately 38% is exported for processing. As indicated above, market channels and markets in general have changed. More dairy products are produced today and more of these value-added products are now processed in State. However, additional in-state markets or capacity would buttress the Vermont dairy market.

Additional processing capacity could be generated in several ways. Vermont could explore attracting a national or regional dairy processor to the State, potentially through economic incentives or a public-private partnership. Another alternative would be to determine if current dairy processors have unused capacity and whether that capacity is available for other processors. For example, existing processors may have closed plants or unused equipment that could be leased or sold to new producers.

The Task Force recommends that the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry explore the various alternatives for increasing dairy processing capacity in the State.

H. Extension of Task Force Authority

As noted in this report, several of the Task Force's recommendations require further inquiry and legal analysis. Under Act 129, the Task Force is currently scheduled to cease to exist on March 1, 2022. The Task Force recommends that its authority be extended until February 1, 2023 so

that it can obtain the legal analysis recommended in this report and recommend further action based on that analysis.

V. CONCLUSION

Act 129 established the Task Force to confront the hemorrhaging loss of Vermont dairy farms over the past twenty years. It charged the Task Force to develop legislation to revise dairy pricing and other market regulation in the State to improve the viability of Vermont dairy farming. Testimony received by the Task Force confirmed that irrational federally regulated producer pricing is the basic cause of the loss of Vermont dairy farms.

Testimony also disclosed that labor and raw milk transportation challenges for dairy farm operation are also contributing factors to the ongoing wholesale exit of farms from the industry. The testimony further revealed that there is need to keep Vermont dairy farmers in operation to ensure they can continue to supply the vibrant and market leading Vermont dairy products manufacturing industry that has developed over the past 40 years. The Task Force recommendations in this report should improve dairy farm operation and help stabilize dairy farming, in the short term.

However, testimony received by the Task Force strongly confirms that additional, comprehensive change to producer pricing is needed. The Task Force identified potential state-based remedies for this chronic problem. These remedies require additional analysis, and the Task Force thereby proposes that its authority be extended to allow for continued development of the proposals. With time, this combination of recommended short-term action and long-term comprehensive change to producer pricing should improve dairy farm operation and provide the Vermont dairy industry with price stability.

Together these actions should prevent the continued loss of dairy farms in the State and return Vermont dairy farming to a profitable and sustainable operation. This sustainable operation will allow Vermont farms to continue to provide the raw product supply for Vermont's market leading dairy products manufacturing industry. Continued operation also enables farms to continue to serve as the backbone of Vermont's rural economy and working landscape.

**Appendix A: Link to Department of Financial Regulation Act No. 129 (2020) Report:
Vermont Dairy Industry Price Regulation: Assessment and Recommendations**



**Act No. 129 (2020) Report:
Vermont Dairy Industry Price Regulation:
Assessment and Recommendations**

**Michael S. Pieciak, Commissioner
January 15, 2021**

<https://legislature.vermont.gov/assets/Legislative-Reports/Act-129-DFR-Dairy-Pricing-Report.pdf>

1 Introduced by Senate Committee on Agriculture

2 Date:

3 Subject: Agriculture; dairy producers;

4 Statement of purpose of bill as introduced: This bill proposes to implement the
5 legislative recommendations of the Task Force to Revitalize the Vermont
6 Dairy Industry.

7 An act relating to revitalizing the dairy industry in Vermont

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

9 * * * Short Title * * *

10 Sec. 1. SHORT TITLE

11 This act may be cited as the Act to Revitalize the Vermont Dairy Industry

12 * * * Risk Mitigation; Premium Assistance * * *

13 Sec. 2. DAIRY RISK MANAGEMENT PROGRAMS; PREMIUM
14 ASSISTANCE

15 (a) As used in this section:

16 (1) “Dairy Margin Coverage Program” or “DMC” is a voluntary
17 program authorized under the Farm Act that provides dairy operations with
18 risk management coverage that will pay producers when the difference
19 between the national price of milk and the average cost of feed falls below a
20 certain level selected by the program participants.

1 (2) “Dairy Revenue Protection Program” or “DRP is a voluntary
2 program authorized under the Farm Act designed to insure against unexpected
3 declines in the quarterly revenue from milk sales relative to a guaranteed
4 coverage level.

5 (3) “Farm Act” means the federal Agriculture Improvement Act of
6 2018, P.L. 115-334.

7 (4) “Good standing” means an applicant under this section:

8 (A) does not have an active enforcement violation that has reached a
9 final order with the Secretary or with the Agency of Natural Resources; and

10 (B) is in compliance with all terms of a current grant agreement or
11 contract with the Secretary.

12 (5) “Livestock Gross Margin Insurance Plan for Dairy Cattle” or LGM”
13 means a voluntary program administered by the U.S. Department of
14 Agriculture to provide pricing protection when feed costs rise or milk prices
15 drop.

16 (6) “Milk producer” or “producer” means a person, partnership,
17 unincorporated association, or corporation who owns or controls one or more
18 dairy cows, dairy goats, or dairy sheep and sells or offers for sale a part or all
19 of the milk produced by the animals.

20 (7) “Secretary” means the Secretary of Agriculture, Food, and Markets.

1 (b) The Secretary shall establish a Dairy Risk Management Assistance
2 Program (Assistance Program) for the purposes of assisting dairy producers
3 that participate in the federal DMC, DRP, or LGM risk management programs.
4 A milk producer dairy producer in Vermont that participates in the DMC at the
5 first-tier coverage level or participates in the DRP or LGM may apply for
6 reimbursement of premium payments from the Assistance Program. A milk
7 producer shall be eligible for assistance if the producer:

8 (1) is in good standing with the Agency of Agriculture, Food and
9 Markets and the Agency of Natural Resources; and

10 (2) provides proof of payment of an annual premium payment for
11 participation on Tier 1 of DMC or for participation in DRP or LGM.

12 (c) A milk producer shall apply to the Secretary by July 1 of 2022 to
13 participate. The Secretary shall reimburse eligible applicants in the order in
14 which their applications were received. After funds are exhausted, applicants
15 shall no longer be eligible during that year for reimbursement from the
16 Secretary.

17 * * * Capital Assistance * * *

18 Sec. 3. 6 V.S.A. § 4828 is amended to read:

19 § 4828. CAPITAL EQUIPMENT ASSISTANCE PROGRAM

20 (a) It is the purpose of this section to provide assistance to purchase or use
21 innovative equipment that will aid in the reduction of surface runoff of

1 agricultural wastes to State waters, improve water quality of State waters,
2 reduce odors from manure application, separate phosphorus from manure,
3 decrease greenhouse gas emissions, and reduce costs to farmers.

4 (b) The capital equipment assistance program is created in the Agency of
5 Agriculture, Food and Markets to provide State financial assistance for the
6 purchase of new or innovative equipment to improve manure application,
7 separation of phosphorus from manure, or nutrient management plan
8 implementation.

9 (c) Assistance under this section shall in each fiscal year be allocated
10 according to the following priorities and as further defined by the Secretary.
11 Priority shall be given to capital equipment to be used on multiple farms;
12 equipment to be used for phosphorus reduction, separation, or treatment; and
13 projects managed by nonprofit organizations that are located in descending
14 order within the boundaries of:

- 15 (1) the Lake Champlain Basin;
- 16 (2) the Lake Memphremagog Basin;
- 17 (3) the Connecticut River Basin; and
- 18 (4) the Hudson River Basin.

19 (d) An applicant for a State grant under this section to purchase or
20 implement phosphorus reduction, separation, or treatment technology or
21 equipment shall pay 10 percent of the total eligible project cost. The dollar

1 amount of a State grant to purchase or implement phosphorus reduction,
2 separation, or treatment technology or equipment shall be equal to the total
3 eligible project cost, less 10 percent of the total as paid by the applicant, and
4 shall not exceed \$300,000.00.

5 (e) The purchase of bulk tanks or cooling systems for a farm shall be
6 eligible for a State grant under this section if the Secretary determined that the
7 bulk tank or cooling system will reduce greenhouse gas emissions by reducing
8 the number of truck trips to the farm annually.

9 Sec. 5. WORKING LANDS

10 In fiscal year 2023, \$300,000.00 is appropriated from the American Rescue
11 Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund to the Agency of
12 Agriculture, Food and Markets for the Working Lands Program to provide
13 grants for Vermont dairy farmers to stabilize driveways and farm roads in
14 order to allow for continued or increased truck traffic by milk haulers. The
15 criteria that the Agency of Agriculture, Food and Markets develops for
16 eligibility for a grant under this section shall include provisions intended to
17 improve or protect water quality.

18 * * * Continuation of Dairy Task Force * * *

19 Sec. 6. 2020 Acts and Resolves No. 129, Sec.31(c)(6) and (7) are amended to

20 read:

1 (6) The Task Force shall cease to exist on ~~March 1, 2022~~ February 1,
2 2023.

3 (7) For attendance at meetings during adjournment of the General
4 Assembly, a legislative member of the Task Force shall be entitled to per diem
5 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for
6 not more than ~~40~~ 20 meetings. These payments shall be made from monies
7 appropriated to the General Assembly.

8 * * * Effective Date * * *

9 Sec. 7. EFFECTIVE DATE

10 This act shall take effect on passage.