

*Task Force to Revitalize the Vermont Dairy Industry*

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

*Vermont Milk Commission*  
*February 13, 2023*

Daniel Smith, Esq., Task Force Co-Chair

# TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY MEMBERSHIP

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

# Presentation Summary

- Timeline
- Findings and Conclusions
- Intro and review of Draft Legislation
- Process Review
- Next Step

# Task Force Timeline – Part 1

- Feb 2020: Joint Senate and House Agriculture Committee Hearing on state milk market regulation and the transformation of the Vermont dairy industry  
*Covid Pandemic erupts*
- May 2020: Act No. 129, Sec. 31 directs Department of Financial Regulation Report and creates the Task Force  
**(1) evaluation of the long-term sustainability of Vermont dairy farming**  
**(2) recommendations for revising regulated dairy pricing**
- Jan 2021: DFR Report submitted
- March 2021: *American Rescue Plan Act enacted*
- May, 2021: Task Force begins work – **13 meetings about configuration of VT dairy industry and key issues confronting the industry**
- Nov 2021: *Infrastructure, Investment, and Jobs Act enacted*  
*\* \$2.6 Billion in Federal Funding For Vermont \**
- Dec 2021: Task Force presents Initial Report with shorter term proposals for federal funding and long-term proposals for structural change; **recommends extension**
- Jan 2022: Task Force report presented to Senate Ag and House Commerce Committees

## Task Force Timeline – Part 2

- --- 2022: 2022 Acts & Resolves No. 162, Sec. 9 authorizes reappointment and extension of Task Force
- August – Dec 2022: *Task Force reappointed and holds 10 meetings regarding law and economics of state over-order milk market regulation*
- Dec 2022: Task Force (6–0) approves and submits final Report (2) to Legislature
  - Draft legislative language updating and amending the authority and process of the Vermont Milk Commission to establish state over-order pricing
  - Recommendation that the Milk Commission be required to meet to determine whether and how it will exercise its revised authority, and report back to the Legislature
  - Recommendation 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
- Jan 2023: 2<sup>nd</sup> Task Force report presented to Senate Ag and House Commerce Committees

Task Force

Principal Findings and Conclusions

- 1. The Vermont dairy Industry has been transformed**
  - *From an industry that historically exported almost all raw milk production to the Boston beverage milk marketplace*
  - *To an in-state, thriving and diverse, value-added dairy manufacture products industry, which*
    - ✓ Utilizes 60 - 65% of overall Vermont raw milk production, and
    - ✓ Imports only 15 - 20% of total raw milk usage
- 2. The Vermont dairy industry is losing dairy farms at an alarming rate while the industry's value added manufacturing sector thrives**
- 3. The transformation of the State's dairy industry has re-established the State's milk market regulatory authority**

**4. Price regulation must apply to pricing transactions for raw milk used for products sold both in-state and out-of-state, to be effective**

- *The economic impact of regulating raw milk used for out-of-state sales is a critical issue, uniquely defining this regulatory construct*

**5. *The enabling Legislation for the Vermont Milk Commission needs substantial updating and revision to reflect the transforming changes to the industry, innovations in milk market regulation, and associated legal requirements***

**6. Legislation to update the law is only one step of a multi-step process that may or may not lead to price regulation**



1. Industry Transformed - Thriving Vermont Value-Added Dairy Industry

2. Alarming Loss of Vermont Dairy Farms

***“Senator Starr’s Dairy Facts”***

# Vermont's Thriving and Diverse Value-Added Dairy Products Industry

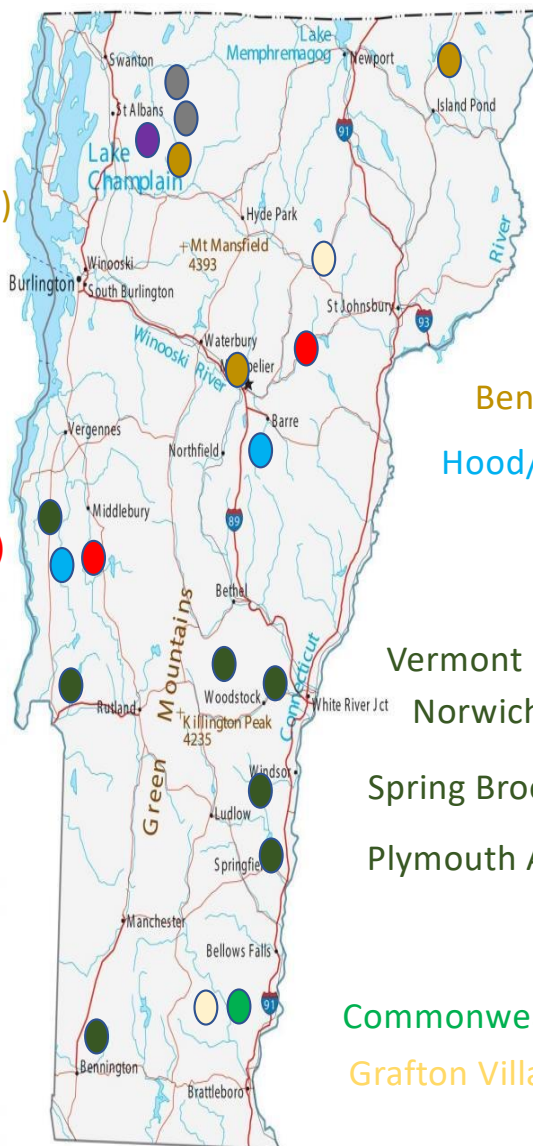
Franklin County Cheese (Enosburg Falls)  
 Swan Valley Cheese Swanton  
 DFA/St Albans Coop Plant (Butter, Powder)  
 Ben and Jerry's Homemade, Inc. (St Albans)

## Vermont's Dairy Industry

Monument Farms (Beverage Milk)  
 Agrimark/Cabot Cheese Plant (Middlebury)  
 Champlain Valley Creamery (Middlebury)

Crowley Cheese, Inc (Healdville)

Maplebrook Farm (Bennington)



Butterwork Farms (Westfield)

Jasper Hills Farm; cheese caves (Orleans)

Agrimark Cabot Cheese Plant (Cabot)

Ben and Jerry's Homemade, Inc. Waterbury

Hood/Booth Bros (Beverage milk)

Vermont Farmstead Cheese (S. Woodstock)

Norwich Farm Creamery

Spring Brook Farm (Reading)

Plymouth Artisan Cheese

Commonwealth Dairy Plant (Yogurt)

Grafton Village Cheese Brattleboro

# Vermont Now Makes All Dairy Industry Products

## Class I

- Bottled Milk
- Cultured Buttermilk
- Eggnog



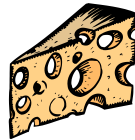
## Class II

- Ice Cream
- Hermetically-Sealed Containers
- Pkg. Cream



## Class III

- Cheese
- Cream Cheese



## Class IV

- Butter
- NFDM



## Vermont's Diverse Milk Production and Supply

### VT Agency of Ag 2021

583 Cow Dairies

### NASS 2021

2.56 Bil lbs Milk

### FMMO 1 – Vermont - 2021

520 Pooled Farms

2.53 Bil lbs Milk

### Organic 2022

155 Producers

165 Mil lbs Milk (est)

### On-Farm (incl. cow, goat, sheep)

70 Producers

124 Mil lbs Milk



# VERMONT



**15,500 TOTAL JOBS**



**\$43.6 Million**  
IN EXPORTS

**\$843.6 Million**  
IN TOTAL WAGES

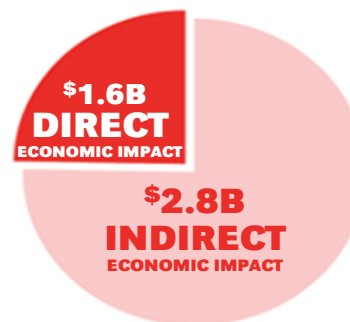
**3.5%**  
US GDP CONTRIBUTION

**13.0%**  
VERMONT GDP CONTRIBUTION

**\$189.1 Million**  
FEDERAL TAX CONTRIBUTION

**\$136.3 Million**  
STATE TAX CONTRIBUTION

**\$4.39 BILLION**  
TOTAL ECONOMIC IMPACT



Industry Transformed:  
Substantial In-state Raw Milk  
Supply and Use

## Change in Vermont FMMO 1 Pooled Milk To Plant Destination

### Dan's Estimate

<u>1996</u>	
Percent	
15%	to VT
85%	to Outside of VT
75%	to MA
<u>Pounds</u>	
375,000,000	to VT
2,125,000,000	to Outside of VT
<u>1,800,000,000</u>	to MA
2,500,000,000	Total

### Audited FMMO 1 Data\*

2011	2015	2019
Percent		
46.1	55.3	62
53.9	44.7	38
35.9	30.3	24
Pounds		
1,178,192,863	1,454,616,033	1,650,500,746
1,379,564,341	1,175,113,124	1,011,425,483
919,415,040	797,271,563	642,124,495
2,557,757,204	2,629,729,157	2,661,926,229

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



## Total VT and Non-VT Supply to VT Plants (est, 2020)

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

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

### **All Milk Received by All Vermont Plants (est)**

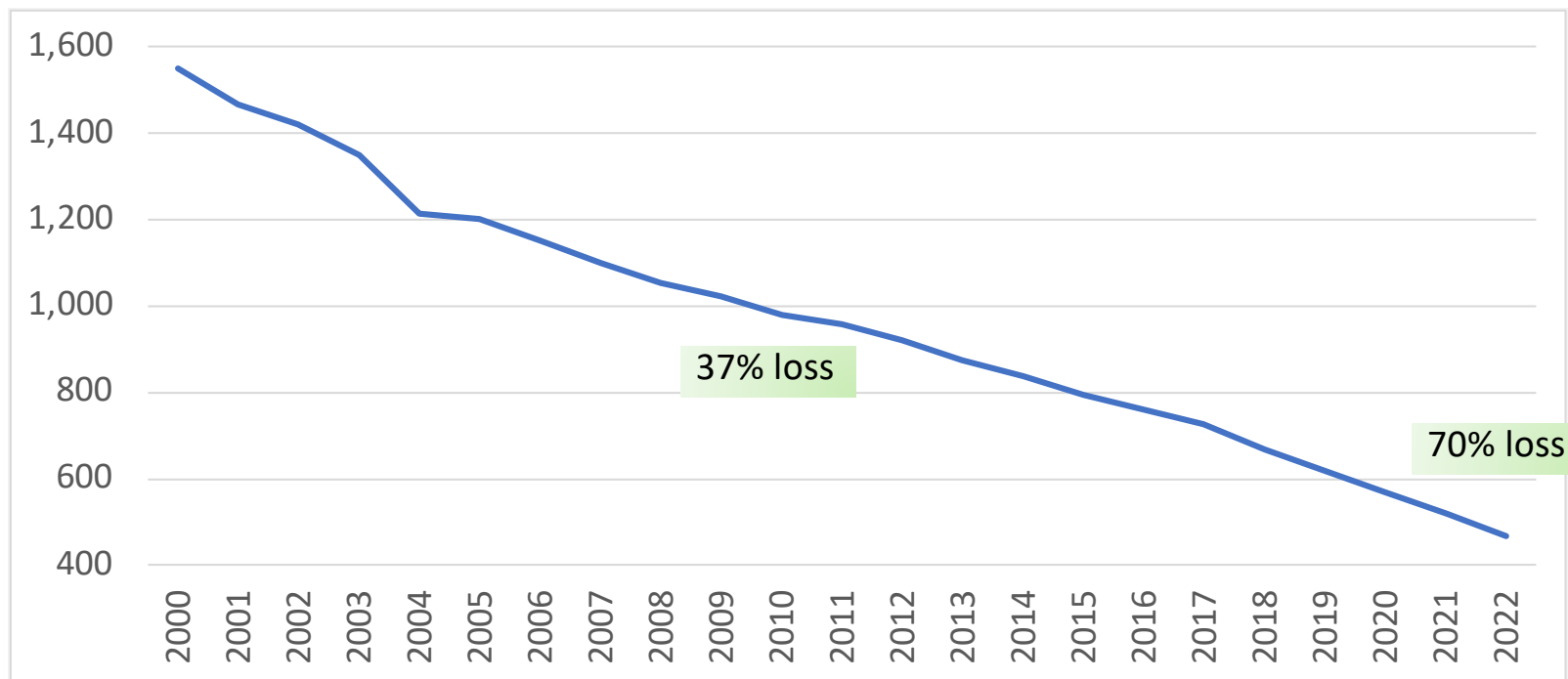
Including Non-pool milk

	2020	
	<i>Pounds</i>	<i>%</i>
VT FMMO 1 Supply	1,578,952,843	<b>79.4%</b>
<b>Non-FMMO 1 VT supply (est*)</b>	44,200,000	<b>2.2%</b>
Total VT Supply (est*)	1,623,152,843	<b>81.6%</b>
FMMO 1 From Outside VT	365,002,671	<b>18.4%</b>
Total VT Plant Supply (est)	1,988,155,514	

## 2. Alarming Loss of Farms

- *Inadequate Pay Prices*
- *Price Volatility*
- *Labor*
- *Other causes*

## Loss of Vermont FMMO 1 Pooled Farms Following 2000 FMMO Reform



### FMMO 1 Number of Producers By State

	CT	DE	ME	MD	MA	NH	NJ	NY	PA	VT	VA	WV	Other States***	TOTAL
<b>2000</b>	216	74	399	687	257	167	160	6,775	6,720	1,549	149	35	92	17,280
<b>2010</b>	127	##	317	469	143	129	88	4,840	5,728	978	54	##	557	13,430
<b>2021</b>	71	##	177	259	78		##	3,217	3,924	520	##	##	492	8,738
<b>2022</b>								November		467				

### FMMO 1 Milk Production By State

	CT	DE	ME	MD	MA	NH	NJ	NY	PA	VT	VA	WV	Other States***	TOTAL
<b>2000</b>	458.9	124.6	507.1	1,118.7	351.3	300.2	224.5	10,153.5	7,664.7	2,651.0	230.8	52.2	119.5	23,957
<b>2010</b>	352.1	##	575.2	806.8	212.7	283.3	125.5	10,827.7	8,040.3	2,491.8	76.7	##	543.6	24,336
<b>2021</b>	418.7	##	557.2	722.4	177.3	210.2	##	13,981.9	8,117.1	2,532.8	##	##	327.7	27,045

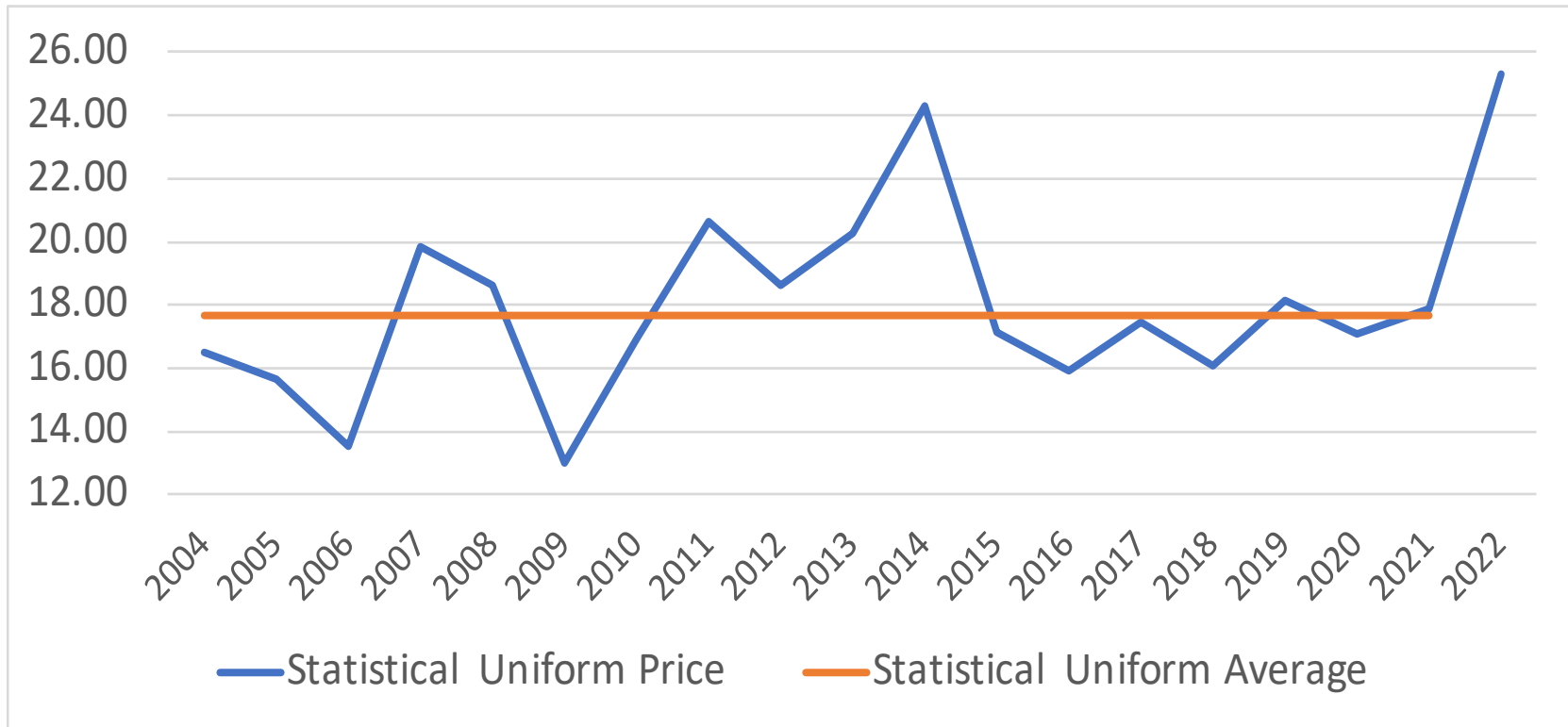
Northeast Milk Marketing Area Statistical Handbook January 2000 – Present, Tables 33 and 34

# Dairy Update – August 29, 2022

- Vermont Cow Dairy Farm Numbers – Agency of Agriculture Dairy Section

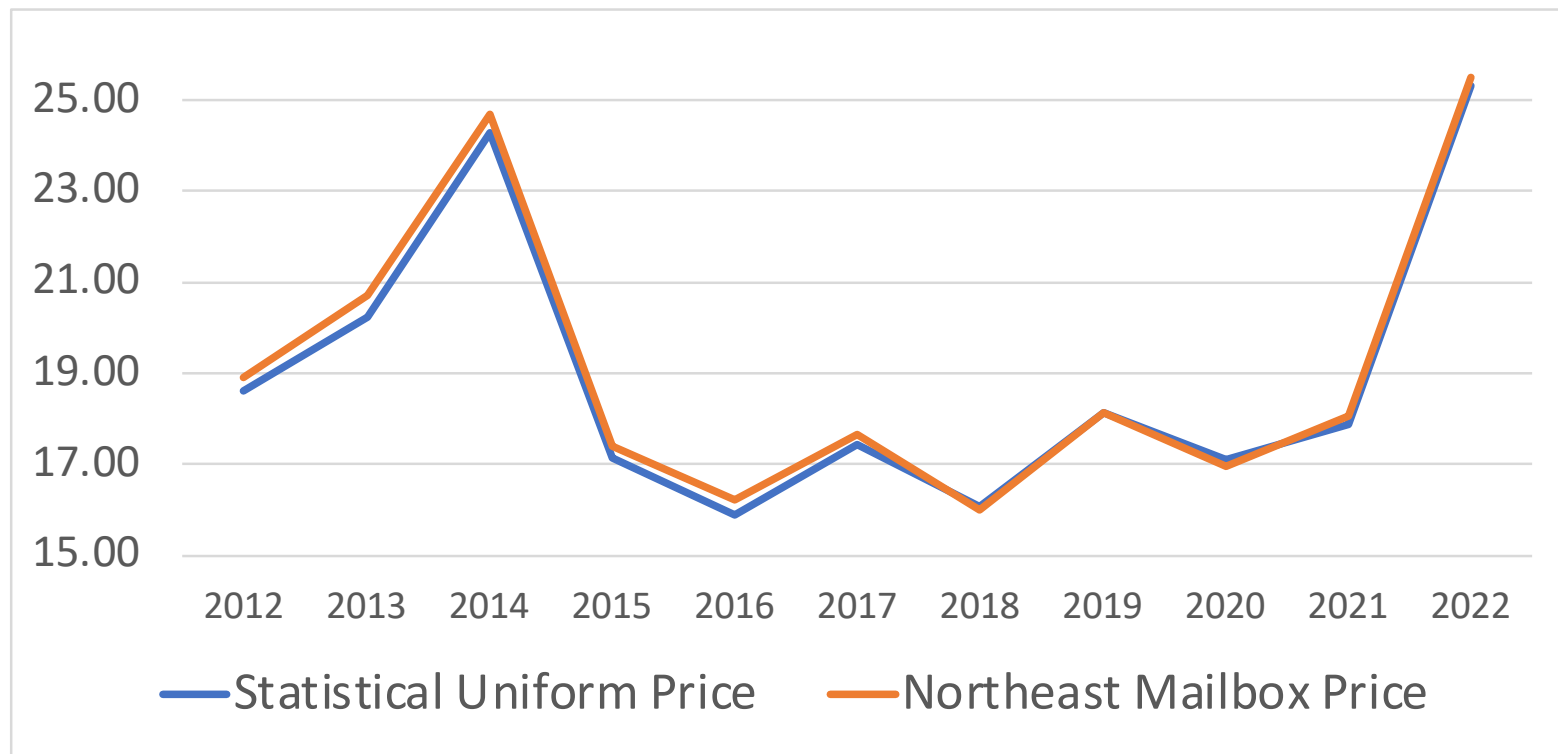
cows						
County	2017	2018	2019	2020	2021	2022 to date
Addison	115	108	103	97	88	84
Bennington	13	12	12	10	10	9
Caledonia	62	58	53	50	51	49
Chittenden	53	42	39	40	28	27
Essex	16	14	13	12	10	10
Franklin	141	130	119	114	109	105
Grand Isle	15	13	12	10	9	9
Lamoille	28	26	26	24	24	24
Orange	73	66	61	56	56	52
Orleans	127	119	111	103	93	90
Rutland	60	53	48	43	38	39
Washington	38	35	30	28	22	19
Windham	22	22	23	22	19	19
Windsor	31	28	28	29	26	23
TOTAL	796	725	677	636	583	558

## FMMO Producer Pricing, 2004 - 2022



Northeast Milk Marketing Area Statistical Handbook January 2000 - Present

## FMMO and Mailbox Pricing, 2012 - 2022



Northeast Milk Marketing Area Statistical Handbook January 2000 - Present

## Dairy Update – August 29, 2022

Vermont Cow Dairy Farm Numbers –  
Organic from NOFA and On-Farm  
Processing from Agency of Agriculture  
Dairy Section

A part of the total of farm numbers in  
Vermont.

### Organic Dairies

2017	2018	2019	2020	2021	2022
199	190	187	169	162	155

### On-Farm Processors - includes Cow, Goat and Sheep

2017	2018	2019	2020	2021	2022
68	63	66	67	70	70



### 3. Vermont's Renewed Legal Authority To Impose State Over-order Price Regulation

## *FMMO 1 Pooled Milk Utilized In-state*

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

Data provided by Brian Riordon, FMMO 1 Economist, Report to the Task Force, October, 2021 P.36

## *Estimate of Total VT Milk Pool*

	2020
	<i>Pounds</i>
Total VT Supply (est*)	1,623,152,843
Total VT Milk Production (NASS)	2,602,000,000
<b><i>% In-state use/production</i></b>	<b><i>62%</i></b>
<b><i>% Export Out of State</i></b>	<b><i>38%</i></b>
Raw Milk to Out-of-State Milk Plants	

**Testimony of Law Professor Brannon Denning  
September 26, 2022**

**<https://www.youtube.com/watch?v=0dFoUzb5YyY>**  
**(1 hr 28 min)**

*\*If out-of-state supply to Vermont plants is also regulated,  
proceeds must be paid equitably to out-of-state producers*

#### 4. Need for Price Regulation to Apply to Raw Milk Used to Manufacture Products Sold out-of-state, To Be Effective

## *In-state and Out-of-state Consumption/Export of Dairy Products*

	Per person per year	Total VT
VT Milk Plant production per year (raw milk equivalent lbs)		1,988,155,514
Vermont Population (2021)    643,000		
Beverage milk consumption (raw milk equivalent, lbs)	141	90,663,000
Other dairy products consumption (raw milk equivalent, lbs)	514	<u>330,502,000</u>
All VT dairy products' consumption (raw milk equivalent lbs)		421,165,000
% of beverage milk consumed In-state/production of all dairy products	5%	
% of all dairy products consumed In-state/production	21%	
Imported dairy products (est)	<u>11%</u>	
<b><i>Net % of VT Milk Plant Production Consumed In-State</i></b>	<b><u><u>10%</u></u></b>	
<b><i>Net % of VT Milk Plant Production Exported Out-of-State</i></b>	<b>90%</b>	

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

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

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(b) The general purposes of this subchapter are to protect and promote the public welfare by insuring at all times an adequate supply of clean, pure milk and cream of proper quality to meet the needs of the inhabitants of this State...(Added 1965, No. 175, § 39; amended 1991, No. 17, § 2, eff. April 4, 1991.)

## *Draft Legislative Amendments*

### ➤ Account For Change to Diverse In-state Manufacturing Industry

- *Statement of Policy and Purpose § 2921*

- *Powers and Duties § 2924(b):* Price regulation authority to include “milk ~~produced~~ manufactured or processed in Vermont...”

- *Producer Price Regulation § 2925(b):* “...the Commission may investigate and ascertain what are reasonable costs and charges for producing, hauling, handling, processing, and any other services performed in respect to Vermont raw milk production and the processing and manufacture of Vermont dairy products.”

- *Producer Price Regulation; § 2925(b):* “The Commission shall also take into account the marketing conditions and costs of all differing market sectors, including organic and conventional raw milk production, processing, and manufacture. The Commission may set the equitable minimum price according to market sector, such as a separate price for organic milk production or any other type of production.”



## ➤ New § 2925 Price Regulation Requirements

- ***Trucking Costs Inquiry Requirement– § 2925(b)(2):*** Minimum producer price regulation shall in part specifically include an investigation and hearing procedure that accounts for the costs of trucking and hauling Vermont raw milk, and the manner of payment to producers under Federal Milk Marketing Order 1 regulation

- ***Supply management requirement (Dairy Compact language) - § 2925(d)(1):*** “(d) A minimum producer price order shall include additional provisions regulating milk supplies (1) to ensure the over-order price does not create an incentive for producers to generate additional supplies of milk or imbalance in supply and demand for raw milk in the Vermont dairy marketplace.
- ***Environmental compliance requirement - § 2925(d)(2):*** “(d) A minimum producer price order shall include additional provisions regulating milk supplies (2) to assure that Vermont raw milk production is sustainable and without adverse impact on the environment.

## ➤ New § 2925 Price Regulation Requirements

- ***Producer referendum requirement – § 2925(f)***: The Commission shall conduct a referendum among producers subject to an order regulating price to determine whether the issuance or amendment of an order establishing a minimum producer price, including any provision with respect to milk supplies under subsection (d) of this section, is approved by producers.
  - (1) Two-thirds of shipping producers
  - (3) No block voting
  - (4) Negative vote does not invalidate Order

***Clarify no reblending of over-order pricing (Dairy Compact process) - § 2925(e)*** ~~Nothing in The~~ Commission may disburse the proceeds of the minimum producer price directly to individual producers who are subject to the price regulation from the equalization pool and fund established by section 2938 of this title, or collectively to handlers for their disbursement to such regulated producers. If distributed to and disbursed collectively by them, producer cooperatives shall pay the full individual amount of the minimum producer price due to each member producer whose milk is subject to the price regulation, provided that this section shall not otherwise be construed to prohibit a producers cooperative from otherwise blending the proceeds from the sale of its milk ...in accordance with federal law. The proceeds of the minimum producer price distributed to producers shall be shown separately on each producer's payment statement.

## ➤ Additional Changes

- *ANR Secretary added to Commission - § 2922*
- *Exemptions added - §§ 2925(g)(h)*
  - Producer handlers
  - Nutrition programs
- *Emergency rulemaking authority added - §§ 2925(g)(i)*

## 6. Incremental Step Forward - Process Review

- **Development of Legislation is only one step of a multi-step process that may or may not lead to price regulation**
  - *Legislative action*
  - *Rulemaking procedure*
    - *“Subjects and Issues” hearing procedure*
    - *Issuance (or not) of a “Proposed Rule” and hearing procedure*
    - *Issuance (or not) of “Final Rule”*
      - *Producer referendum (approval or not)*
    - *Critical issues of consumer and industry impact are comprehensively assessed here*

## Next Step

Draft would require Commission to hold one hearing and report back to the Legislature.

# Sources

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

Dr. Christopher Wolf, Testimony Before the Task Force, September 12, 2022

Julie Marie Bickford, Executive Director, Maine Dairy Industry Association, Report to the Task Force, October 12, 2021

Diane Bothfeld, Director of Administrative Services and Dairy Policy, Information from the VT Agency of Agriculture, Food and Markets, Update Report to the Task Force, June 7, 2021

Diane Bothfeld, Update Report to the Task Force, August 29, 2022

Northeast Milk Marketing Area Statistical Handbook January 2000 - Present