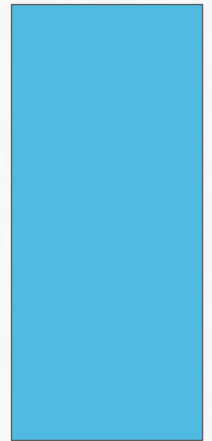


VERMONT MILK COMMISSION

AUTHORITY, OPEN MEETING LAW,
POWERS AND DUTIES



6 V.S.A. CHAPTER 161

Section 2921 Declaration of Policy and Purpose

“It is hereby declared by the General Assembly that dairy farming is of paramount importance in helping to maintain a strong economy and in preserving the State’s remaining rural character; that dairy farming is in serious jeopardy because of the rapidly declining price of milk being paid to producers while corresponding costs of production remain the same or increase”

GENERAL PURPOSES

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 Vermonters.

To **ensure the continuing economic viability of the dairy industry** by stabilizing the price received by farmers for their milk at a level allowing them an equitable rate of return.

MEMBERSHIP

Nine members:

- Secretary of Ag (chair)
- 2 Dairy Farmers submitted by dairy farm cooperatives and handlers and appointed by Governor
- Milk Handler submitted by handlers and appointed by Governor
- 2 Milk Consumer Representatives
- Dairy Farmer chosen directly by Governor
- Member of the House Committee on Ag and Forestry
- Member of the Senate Committee on Ag

PUBLIC HEARINGS

In order to be informed of the status of Vermont's dairy industry, the Commission shall hold a public hearing at least annually, when directed by the General Assembly, and whenever the Chair of the Commission deems it necessary.

OPEN MEETINGS

Why?

“Any day in the legislature is in session we can sit down in either chamber, or in the various committee rooms, and see laws being made. Any day we can walk into the county courthouse and attend any hearing or trial. We can watch the arguments being given before the Vermont Supreme Court. We can attend hearings and meetings of the local zoning board, and those of any other public body, and we can expect to see meetings in the newspaper or on public bulletin boards . . .”

A Guide to Open Meetings, Vermont Secretary of State

PUBLIC BODY

Any state or municipal board, council, or commission, as well as any committee or subcommittee of these bodies.

1 V.S.A. Section 310(4)

Open meeting law applies any time a “quorum” holds a “meeting,” that is gathering to discuss its business or take action.

1 V.S.A. Section 310(3)(A)

A quorum is a majority of members of a public body. The quorum for the Commission is 5.

“Business of the public body” is “the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.”

OPEN MEETING LAW

- Open meeting law recognizes three types of meetings: regular, special, and emergency.
- Depending on meeting type, may need to provide advance notice by public **announcing** the meeting or posting public notices or both.
- Create **agenda** and provide it in advance of meeting and to the public.
- Must take **minutes**. Post them on website. Make them available for inspection and copying.

NEED TO BE CAREFUL ABOUT COMMUNICATIONS

SOS “generally recommend(s) that [the public body] members **avoid engaging in successive, interrelated private conversations about the [public body’s] business,** that, taken together involve a quorum.”

Because the law allows for “gathering” over time, these types of communications can be **“risky, especially if used to develop consensus.”**

“Even with the best intentions, their use outside a duly warned meeting **may obscure [the public body’s] decision-making process and thus interfere with the public’s ability to participate and to hold government officials accountable.**”

ROLE OF AAFM

Vermont Agency of Agriculture, Food and Markets performs the **administrative work** of the Commission as directed by the Commission.

Commission may reimburse AAFM for costs of these services.

Commission may contract with technical experts, legal counsel, and others so as to carry out their work and the Commission will pay them from its fund.

POWER

The Commission has the power to:

- make orders
- conduct hearings

The Commission can subpoena and examine under oath:

- Producers, Handlers and Distributors
- Anybody it deems necessary.

It can subpoena and examine their books, records, documents, correspondence, and accounts.

ORDERS

What does the Commission **HAVE** to do to make orders?

Must hold **at least one formal deliberative meeting** before the issuance of a proposed or final order.

Must publish proposed order for **public review and comment** for 30 days following publication.

Must have a **public hearing** that it has noticed in accordance with the Administrative Procedures Act.

Must adopt **rules of procedure** for the conduct of a hearing and issuance of a proposed and final pricing order.

ORDERS

Must use hearing procedure that provides for:

a formal record of sworn evidence received, matters officially noticed, questions and offers of proof submitted by interested persons, and any proposed findings presented.

ORDERS

Final order shall contain:

- Separate findings of fact and conclusions based exclusively on the evidence presented at the hearing and on matters officially noticed
- Specific response to any submissions filed by interested persons, including proposed findings.

ORDERS

Orders can be challenged:

Within 20 days after Commission makes a final order, a **rehearing** can be requested by making a motion.

Motion must state fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.

Commission can grant the rehearing if in its opinion **good reason** for rehearing is stated in the motion.

ORDERS

Upon the filing of a motion for rehearing, Commission shall within 10 days **grant or deny motion OR suspend** the order or decision complained of pending further consideration.

If Commission denies motion for rehearing or if the applicant is not happy with the decision on rehearing, applicant can **appeal to the Vermont Supreme Court**.

ADMINISTRATIVE PENALTY INJUNCTIVE RELIEF

Any handler or distributor that buys, offers to buy, sells, or transfers ownership of milk in any format at any price or for any consideration which is less than the price or prices set by rule of the Commission may be:

assessed an administrative penalty by the Secretary of Ag in an amount not to exceed \$10,000 for each violation and not to exceed \$50,000 per day.

Secretary may also require them to conduct injunctive relief.

POWERS AND DUTIES

Authority over milk prices

May establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms.

Established prices that exceed federal order prices shall be collected by the Commission from the handlers for distribution to dairy producers as a blend price.

PREMIUMS

Premiums on handlers and distributors for milk used in dairy products sold at retail in VT

- may assess a premium on handlers & distributors for milk used in dairy products sold at retail in VT
- premiums assessed & received shall be paid to the state treasury & deposited in the special fund
- proceeds of the premium shall be distributed to dairy producers as a blend price
- Commission shall also take into account any similar assessments made by other states when setting premium

PAYMENT STATEMENTS

Payment Statements Requirements

- national support price
- the Boston, MA price
- the producer price differential
- the amount per hundredweight of any charges or deduction

Format shall be provided with clear language and with no abbreviations

MINIMUM PRODUCER PRICE REGULATION

- make, rescind, or amend an order regulating minimum producer prices IF
- FMMO price to cover cost of production
- provide a reasonable economic return to dairy producers
- sufficient to ensure a stable milk production and distribution system in VT

GUIDELINES FOR SETTING PRICES

Minimum producer price regulation

The Commission shall investigate and ascertain what are reasonable costs and charges for:

- Producing
- Hauling
- Handling
- Processing
- and any other services performed in respect to dairy products.

GUIDELINES FOR SETTING PRICES

The Commission shall consider:

- balance between production and consumption of dairy products,
- the costs of production and distribution,
- the purchasing power of the public, and
- the price necessary to yield a reasonable return to the producers, handlers, and distributors.

GUIDELINES FOR SETTING PRICES

Minimum producer price should reflect:

- producer prices prevailing in federal market order
- reflect as accurately as possible the costs of production in VT
- within constitutional limitations, the competitive position of VT producers within the market order.
- actual rate of return received by distributors or handlers, whichever is greater, as determined by the Commission.

GUIDELINES FOR SETTING PRICES

Minimum retail prices should reflect lowest price at which milk purchased from producers

- Received
- Processed
- Packaged
- distributed by handlers and distributors

To provide a just and reasonable return.

GUIDELINES FOR SETTING PRICES

Minimum producer & retail prices

The Commission shall make applicable findings regarding:

- the competitive position of producers and their costs,
- handler and distributor costs,
- reasonable rates of return,
- and actual handler and distributor rates of return.

GUIDELINES FOR SETTING PRICES

Once prices established:

- need not be uniform in all markets
- may be changed from time to time after such notice and public hearing
- deemed by the Commission to be in the public interest.

GUIDELINES FOR SETTING PRICES

Pricing by cooperatives

A producer cooperative can:

- Blend the proceeds from the sale of its milk in all markets and all classifications
- Distribute payments to its members in accordance with the contract with its members
- Deduct from sums due members of such sums as may be authorized by the membership to be so deducted

GUIDELINES FOR SETTING PRICES

Law applies to:

- Milk produced outside the state subject to regulation by the state in the exercise of its constitutional police powers.
- Any sale or purchase by distributors or handlers of such milk within this state at a price less than a regulated minimum price shall be unlawful