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Title 6: Agriculture

Chapter 161: Vermont Milk Commission

- **Subchapter 1: Vermont Milk Commission**
- **§ 2921. Declaration of policy and purpose**

(a) 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 at present 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; that the federal milk marketing order minimum price for milk is now and may be in the future inadequate to cover the costs of milk production and provide for a reasonable economic return to dairy producers; that the entire distribution structure of the milk industry is threatened; and that Vermont should ensure that there is an adequate supply of milk for the consuming public both inside and outside Vermont. The general assembly also reaffirms and restates its findings and statement of policy as set forth in section 2671 of this title. Due to the uncertainty in the federal market order structure and marked fluctuations in market order prices, the dairy industry of the state is imperiled, which is a menace to the health, welfare and reasonable comfort of the inhabitants of the state.

(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 and to ensure the continuing economic vitality of the dairy industry by stabilizing the price received by farmers for their milk at a level allowing them an equitable rate of return. These purposes are to be accomplished through regulation of the milk-marketing industry, and through control in general, consistent with constitutional limitations, of the price of all fluid dairy products sold or offered or exposed for sale to the inhabitants of this state and by Vermont farmers, to the end that the public health and economic welfare of the state shall not be menaced or jeopardized. (1965, No. 175, § 39; amended 1991, No. 17, § 2, eff. April 4, 1991.)

- **§ 2922. Vermont milk commission; membership**

There shall be a Vermont milk commission, to consist of nine members, one member of which shall be the secretary of agriculture, food and markets. The secretary shall be chair of the commission and serve without compensation. A quorum shall be a majority of the commission. The commission shall act only by an affirmative vote of at least six members. The remaining commission members shall serve for terms of three years, except for the legislative members who shall serve for the term of their election, and be chosen as follows:

(1) Each dairy farmer cooperative, and each proprietary handler purchasing milk from independent farmers, doing business in the state and registered with the secretary of state's office shall submit the name of a Vermont dairy farmer with knowledge of the production and marketing of dairy products to the Vermont Dairy Industry Association. The board of directors of the Association shall submit the names of four of these persons to the governor, who shall appoint two commission members from the list submitted. The initial appointment of one of these members shall be for a term of two years.

(2) Each milk handler doing business in the state and registered with the secretary of state's office shall submit the name of one such handler with knowledge and experience in the marketing of dairy products to the Vermont Dairy Industry Association. The board of directors of the Association shall submit three names to the governor, who shall choose one commission member from the list provided. In compiling the lists under subdivisions (1) and (2) of this section, the board shall consider whether the persons chosen sell their milk to or are handlers who purchase a substantial percentage of their milk from Vermont producers and utilize the milk purchased in the most advantageous manner possible.

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

(4) One dairy farmer, chosen directly by the governor, who does not serve on the board of directors of any organization which handles or processes dairy products, nor is an officer of any organized farm organization in the state.

(5) One member from the house committee on agriculture chosen by the speaker and one member from the senate committee on agriculture chosen by the president pro tempore of the senate. For attendance at a meeting when the general assembly is not in session, these two legislative members shall be entitled to the same per diem compensation and reimbursement of necessary expenses as provided members of standing committees under 2 V.S.A. § 406. (Added 1965, No. 175, § 40; amended 1991, No. 17, § 3; 1993, No. 127 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003; 2007, No. 157 (Adj. Sess.), § 3, eff. May 20, 2008.)

- **§ 2923. Administrative work**

The Vermont agency of agriculture, food and markets shall perform the administrative work of the commission as directed by the commission. The commission may reimburse the agency of agriculture, food and markets for the cost of services performed by the agency. The commission may enter into contracts with and employ technical experts and authorize and retain legal counsel, and other such officers, agents, and employees as are necessary to effect the purposes of this chapter, and may fix their qualifications, duties, and compensation. The contract remuneration and employment compensation shall be paid from the Vermont milk commission fund and shall be subject to the limitations of section 2924 of this chapter. (Added 1965, No. 175, § 41; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 17, § 8(a), eff. April 4, 1991; 2003, No. 42, § 2, eff. May 27, 2003; 2007, No. 157 (Adj. Sess.), § 4, eff. May 20, 2008.)

- **§ 2924. Powers and duties; pricing authority; public hearings**

(a) Authority over milk prices. The commission may 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 cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of monies collected under this section shall not exceed \$100,000.00 annually and may be collected independently from any assessment imposed under this section. The commission may impose an assessment to cover the initial costs of establishing a pricing order as authorized by this section.

(b) Equitable minimum producer prices. The commission 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. Prices so established which exceed federal order prices shall be collected by the commission from the handlers for distribution to dairy producers as a blend price.

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing at least annually, when directed by the general assembly, and whenever the chair deems it necessary.

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

(e) Premiums on handlers and distributors for milk used in dairy products sold at retail in Vermont. The commission may assess a premium on handlers and distributors for milk used in dairy products sold at retail in Vermont. The premiums assessed and received shall be paid to the state treasury and deposited in the special fund established pursuant to section 2938 of this chapter. The proceeds of the premium shall be distributed to dairy producers as a blend price. Any applicable provision of subsections 2925(b)-(f) of this title shall apply to the assessment of such premiums. In assessing these premiums, the commission shall also take into account any similar assessments made by other states.

(f) Payment Statements. Payment statements provided to producers of cows' milk shall include in the payment statement the national support price, the Boston, Massachusetts price, the producer price differential, and the amount per hundredweight of any charges or deductions where applicable. The format shall be provided with clear language and with no abbreviations, except where the abbreviation is spelled out elsewhere in the statement. (Added 1965, No. 175, § 42; amended 1991, No. 17, § 4, eff. April 4, 1991; 1991, No. 17, § 4, eff. April 4, 1991; 1991, No. 232 (Adj. Sess.), § 9; 2007, No. 38, § 22, eff. May 21, 2007; 2007, No. 157 (Adj. Sess.), § 5, eff. May 20, 2008; 2009, No. 48, § 2, eff. May 28, 2009.)

• **§ 2925. Minimum producer price regulation**

(a) The commission may make, rescind, or amend an order regulating minimum producer prices if the commission finds that the federal milk marketing order minimum price is adequate or inadequate as the case may be to ensure that the price paid to dairy producers will cover the costs of milk production and provide a reasonable economic return to dairy producers sufficient to ensure a stable milk production and distribution system in Vermont.

(b) Guidelines for setting prices. In setting equitable minimum prices, the commission may investigate and ascertain what are reasonable costs and charges for producing, hauling, handling, processing, and any other services performed in respect to dairy products. The commission shall take into consideration the 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.

(1) Minimum producer prices may be based on the producer prices prevailing in federal market order 1 and reflect as accurately as possible the costs of production in Vermont. The prices should also reflect, within constitutional limitations, the competitive position of Vermont producers within the market order. Minimum producer prices should also reflect the actual rate of return received by distributors or handlers, whichever is greater, as determined by the commission.

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

(3) In establishing minimum producer and 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.

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

(d) Nothing herein shall be construed to prohibit a producers cooperative from blending the proceeds from the sale of its milk in all markets and all classifications, and distributing such to its members in accordance with the contract with its members, or from making deductions from sums due members of such sums as may be authorized by the membership to be so deducted.

(e) This chapter shall apply 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.

(f), (g) Deleted.] (Added 1965, No. 175, § 43; amended 1991, No. 17 § 5, eff. April 4, 1991; 1991, No. 17, § 5, eff. April 4, 1991; 1991, No. 185 (Adj. Sess.); 2007, No. 157 (Adj. Sess.), § 6, eff. May 20, 2008.)

- **§ 2926. Classes and grades**

The commission may accept established and defined classes and grades of fluid dairy products or may establish classes and grades. It shall specify to what classes or grades the prices fixed under section 2925 of this title shall apply. (1965, No. 175, § 44; amended 1991, No. 17, § 8(a), eff. April 4, 1991.)

- **§ 2927. Interstate conferences and compacts**

The commission shall have power to confer and agree with legally constituted similar boards or authorities of other states, or agencies of the federal government, and to adopt necessary regulations to effect a uniformity in regulation and assure an adequate and proper supply of fluid dairy products in Vermont; also to confer with similar boards or other authorities of other states or of the United States with respect to uniform milk control of milk produced in this state and handled in interstate commerce and may exercise all the powers hereunder for such purpose as well as, but not limited by, the following powers:

(1) To conduct joint investigations and hearings and to issue joint or concurrent orders or enter into agreements or compacts subject to congressional approval and amendments thereto. Also to employ or designate a joint agent or agencies to enforce such order or compacts. No such compact or order or any amendment to such order shall be effective, however, until the commission finds that it is approved by two-thirds of the producers of this state whose milk is consumed in whole or in part in an area designated by the compact.

(2) To make regulations and orders and prescribe procedures for ascertaining approval of producers, where required, by stipulation, direct referendum, or otherwise as the commission may determine.

(3) To require payment by handlers of their pro rata shares of the expenses involved in the operation of such order or compact.

(4) To provide for classification of milk in accordance with the form in which it is used or moved with uniform minimum prices or methods of fixing such prices for each class; for payment to all producers and associations of producers delivering milk to handlers of uniform prices irrespective of the use made by the handler to whom delivered, subject to adjustments for grade, location, and butterfat content; for adjustment by the handlers with the joint agent in order to ensure uniformity in and equalization of prices as between producers and handlers; compensation for services to producers; and to make such joint regulations by compact or otherwise as may be incidental to the foregoing and not inconsistent thereto and as may be necessary to effectuate the above-mentioned powers. (1965, No. 175, § 45; amended 1991, No. 17, § 8(a), eff. April 4, 1991.)

- **§ 2928. Repealed. 2007, No. 157 (Adj. Sess.), § 13, eff. May 20, 2008.**
- **§ 2929. Power to make orders and conduct hearings; regulations.**

(a) In administering this chapter, the commission shall have the power to make orders hereunder, conduct hearings, subpoena, and examine under oath producers, handlers, and distributors, their books, records, documents, correspondence, and accounts, and any other person it deems necessary to carry out the purposes and intent of this chapter.

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

(1) The commission shall provide notice of the hearing on the proposed order to interested persons in accordance with the applicable provisions of 3 V.S.A. § 809(b), and to the public by advertisement in the newspapers of record approved by the secretary of state under 3 V.S.A. § 839. The notice shall include proposed regulatory procedures for administration of the pricing order, as appropriate, and otherwise provide sufficient notice and explanation of the potential operation and impact of the order, including proposed findings and conclusions consistent with the requirements of section 2925 of this chapter.

(2) Interested persons shall not be considered "parties" and, except as otherwise specifically provided by subsection (c) of this section, the provisions of 3 V.S.A. chapter 25 relating to contested cases shall not apply to the procedure for the conduct of the hearing, the issuance of a proposed pricing order, or the promulgation of a final order. The hearing on the proposed order shall be held in accordance with the applicable provisions of 3 V.S.A. § 840(c) and (d), other than the provisions therein relating to notice and the requirements of 3 V.S.A. § 832a. The hearing procedure shall provide for the establishment of a formal record of sworn evidence received, matters officially noticed, questions and offers of proof submitted by interested persons, and any proposed findings presented.

(3) The final order shall contain separate findings of fact and conclusions responsive to the requirements of section 2925 of this chapter and based exclusively on the evidence presented at the hearing and on matters officially noticed. The final order shall also provide specific response to any submissions filed by interested persons, including proposed findings. The final order shall be issued again in accordance with the procedural requirements of subdivision (1) of this subsection.

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

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

(d) The commission shall adopt rules of procedure for the conduct of a hearing and issuance of a proposed and final pricing order under this chapter. Such rules may be adopted as emergency rules in accordance with 3 V.S.A. chapter 25. The commission may adopt and enforce such reasonable rules and procedures as are deemed necessary to carry out the administration of the provisions of this chapter. (Added 1965, No. 175, § 50; amended 1991, No. 17, § 8(a), eff. April 4, 1991; 2007, No. 157 (Adj. Sess.), § 7, eff. May 20, 2008.)

- **§ 2930. Repealed. 2007, No. 157 (Adj. Sess.), § 13, eff. May 20, 2008.**

- **§ 2931. Rehearing of orders and decisions**

(a) Within 20 days after any final order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor. The commission may grant such rehearing if in its opinion good reason therefore is stated in such motion.

(b) The motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided. When the application has been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown allows the appellant to specify additional grounds. (Added 1965, No. 175, § 51; amended 1991, No. 17, § 8(a), eff. April 4, 1991; 2007, No. 157 (Adj. Sess.), § 8, eff. May 20, 2008.)

- **§ 2932. Determination of motion for rehearing**

Upon the filing of a motion for rehearing, the commission shall within ten days either grant or deny the motion, or suspend the order or decision complained of pending further consideration. (Added 1965, No. 175, § 52; amended 1991, No. 17, § 8(a), eff. April 4, 1991; 2007, No. 157 (Adj. Sess.), § 9, eff. May 20, 2008.)

- **§ 2933. Appeal to supreme court**

When any application for a rehearing is denied, or if the applicant is aggrieved at the decision on rehearing, the applicant may appeal to the supreme court. (1965, No. 175, § 53; amended 1971, No. 185 (Adj. Sess.), § 18, eff. March 29, 1972.)

- **§ 2934. Repealed. 2003, No. 70 (Adj. Sess.), § 67, eff. March 1, 2004.**

- **§ 2935. Prohibition; administrative penalty; injunctive relief**

(a) Any handler or distributor that buys, offers to buy, sells, or transfers ownership of milk in any form 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, in accordance with the standards and procedures set forth in sections 15, 16, and 17 of this title, in an amount not to exceed \$10,000.00 for each violation and not to exceed \$50,000.00 per day for multiple violations in a single transaction or a series of related transactions.

(b) The commission, through the secretary, may seek appropriate injunctive relief to enforce the provisions of this chapter. (Added 1991, No. 17, § 6, eff. April 4, 1991; amended 2003, No. 42, § 2, eff. May 27, 2003.)

- **§ 2936. Reports from milk handlers; release of information by handlers**

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

(1) information on a time schedule established by the secretary from handlers showing the prices paid to purchase various forms of milk from Vermont producers, the costs of production, processing, transporting, distributing, and marketing milk, together with any other information deemed necessary and relevant by the commission; and

(2) that each milk handler licensed pursuant to section 2721 of this title execute a release with the federal market order administrator authorizing the secretary and the commission to obtain all production data which in the discretion of the secretary and commission is deemed relevant and necessary.

(b) The commission shall keep information received under this section confidential except as necessary for the adoption of rules or enforcement actions. (Added 1991, No. 17, § 7, eff. April 4, 1991; amended 2003, No. 42, § 2, eff. May 27, 2003.)

- **§ 2937. Annual report**

The commission shall report annually on its activities to the house and senate committees on agriculture on or before January 15, beginning in 2009. (Added 2007, No. 50, § 5, eff. May 26, 2007.)

- **§ 2938. Fund established**

The Vermont milk commission fund is established in the state treasury and shall be administered by the secretary of agriculture, food and markets in accordance with the provisions of subchapter 5 of chapter 7 of Title 32, except that interest earned on the fund shall be retained in the fund. Proceeds from this chapter shall be deposited into the fund. The fund shall be used as necessary for the purposes of this chapter. The treasurer shall distribute funds as directed by the commission. (Added 2007, No. 157 (Adj. Sess.), § 10, eff. May 20, 2008.)

- ***Subchapter 2: State Dairy Council***

- **§§ 2941, 2942. Repealed. 1989, No. 256 (Adj. Sess.), § 11(b), eff. Jan. 1, 1991.**

- ***Subchapter 3: Revenues And Appropriations***

- **§ 2951. Repealed. 2007, No. 157 (Adj. Sess.), § 13, eff. May 20, 2008.**

- **§ 2952. Repealed. 1991, No. 232 (Adj. Sess.), § 8.**