

# **A Proposal to Amend the *Milk Act* and the *Food Safety and Quality Act, 2001*: Discussion Paper**

## **Context: *The Milk Act* and *the Food Safety and Quality Act, 2001***

The dairy production and processing sector plays an important role in the success of our province's agri-food industry and provincial economy, contributing significantly to the creation of jobs and the gross domestic product (GDP).

The *Milk Act* was introduced in 1965 and provides the provincial legislative framework to regulate the production, transportation, processing and distribution of cow and goat milk and milk products. The Act was primarily intended to address market inefficiencies related to the production and supply of cow milk. The regulations under the Act provide a regulated marketing scheme for cow milk within a national supply management system. There is no marketing plan for goat milk. Food safety regulatory requirements for cow milk and milk products were enhanced incrementally over time and included goat milk and milk products.

The Ontario Ministry of Agriculture, Food, and Agribusiness (OMAFRA) is responsible for the *Milk Act* that empowers the Ontario Farm Products Marketing Commission (OFPMC) - an Ontario government agency to make most regulations. While the OFPMC is responsible for making regulations related to both orderly marketing and food safety aspects of cow and goat milk and milk products, OMAFRA is responsible for enforcement of the food safety requirements related to the production, transportation, processing and distribution of cow and goat milk, except for the on-farm cow milk quality program discussed below. As such, all dairy processors in Ontario that process cow and goat milk, distributors of fluid milk (e.g., milk, cream), and goat milk producers are subject to inspection by OMAFRA.

*The Food Safety and Quality Act, 2001* (FSQA) is a more modern and enabling statute, with the primary objective of providing for food safety and quality for Ontarians. It enables food safety of any food to be regulated under one piece of legislation. Its current scope does not include milk as defined under the *Milk Act*, except as an ingredient in other foods.

OMAFRA calculations suggest that 118,247 direct jobs and \$6.67 billion in GDP can be attributed to the dairy industry value chain (farm, processing and retail) in 2023. To support a competitive Ontario dairy sector and enable growth and innovation, OMAFRA is proposing a number of legislative amendments to the *Milk Act* and the *Food Safety and Quality Act, 2001*, as described in this paper.

## Summary of Proposal

The *Milk Act* is now over 50 years old (with some requirements included in predecessor legislation dating back to the 1930s) with no substantive updates in over 20 years. The industry has evolved over time and as such, legislative changes are required to reflect modern provisions for regulated marketing and food safety, and to better support the dairy sector moving forward.

Under the Canadian dairy supply management system, all milk products used by processors making a dairy product are to be billed according to the end use of the milk. Currently, the implementation of this pricing system in Ontario is limited as it doesn't directly regulate the use of intermediary milk products (ingredients) by those processors that do not receive milk from DFO.

In addition, there is inconsistent regulatory food safety oversight of milk in Ontario because the *Milk Act* does not provide for oversight of the production, transportation or processing of milk from species other than cow and goat. This situation persists even though the same food safety risks exist for milk from different species (sheep, water buffalo).

OMAFRA is proposing two sets of legislative amendments to the *Milk Act* and amendments to the *Food Safety and Quality Act, 2001* (FSQA) to better reflect the current industry and support a safe, modern and efficient dairy sector going forward. It is important to note that the proposed amendments do not affect the general application or operation of the supply management system for cow milk.

### End use pricing

OMAFRA is considering amendments under the *Milk Act* to enable milk products, or milk products used as ingredients in the processing of milk products, to be regulated through the Dairy Farmers of Ontario (DFO) marketing plan. These amendments would allow the DFO to enforce equivalent pricing obligations for all processors, whether they buy milk from the dairy marketing board or not. Additionally, these proposed amendments would align with decisions that have been made at the Canadian Milk Supply Management Committee with respect to marketing milk.

Under the Canadian dairy supply management system, milk is priced based on the type of end product that it is processed into. If milk is used to process a product, and that product is in turn used as an ingredient in the processing of a different type of dairy product, the milk is billed according to the final product. For the system to be equitable, this policy is inclusive of both processors who purchase from dairy marketing boards (called milk buyers) and those who purchase dairy ingredients from other processors to then make a dairy product (called non-milk buyers).

In Ontario, the implementation of this pricing system is limited by the existing definition of a regulated product under the *Milk Act* which is inclusive of only milk, cream or cheese, and doesn't account for intermediary milk products (ingredients) that are increasingly used in the manufacturing of dairy products. The regulations under the *Milk*

*Act* do not currently provide the DFO with the authority to regulate non-milk buyers (who purchase milk ingredients from milk buyers to make a dairy product), which is needed to fully enable end use pricing policies. There is a risk that some processing entities may not be billed for their milk at the same price as others due to the use of ingredients, creating risks to the integrity of the supply management system in Ontario.

## Dairy Legislative Alignment

A second set of amendments would allow for the future transfer of food safety and quality requirements for cow and goat milk from the *Milk Act* and its regulations to a new food safety and quality regulation for all milk producing species under the FSQA.

The *Milk Act* currently gives food safety regulation-making responsibility to the OFPMC for cow and goat milk and their milk products. Food safety is not part of OFPMC's core mandate. In addition, food safety and quality requirements under the *Milk Act* are for cow and goat milk only. The production, transportation, and processing of milk from other species (e.g., sheep and water buffalo) is currently under the food safety regulatory oversight of Public Health Units under the authority of the *Health Protection and Promotion Act* (HPPA).

Milk and milk products are inherently higher risk foods in terms of food safety. The same food safety risks exist for milk from different species (cow, goat, sheep, water buffalo) and thus inspection oversight and regulatory requirements for all milking species should be under a common regulatory framework that is best suited to address the inherently higher risk.

By enabling the consolidation of food safety requirements for milk from all milk-producing species (e.g., cow, goat, sheep, water buffalo) into a regulation under the FSQA - an act expressly developed for food safety oversight - the proposed amendments would bring food safety regulation making under Cabinet level authority (Lieutenant Governor in Council) as is the case for all other foods. This would align with other foods subject to OMAFA inspection oversight (and align inspector authorities and available compliance tools under one piece of legislation).

This discussion paper is focused primarily on the changes to the *Milk Act* that would be needed to enable that all milk products are priced according to end use and on changes to both the *Milk Act* and the FSQA to consolidate food safety oversight of milk from all species into a future regulation under the FSQA. Consequential amendments to the HPPA would also be required. Should proposed amendments to these statutes be introduced, passed, and become law, changes to existing regulations under the *Milk Act* and a new regulation under the FSQA will also be required in the future. There would also be a public consultation regarding any future regulatory updates that would allow additional opportunity to provide input.

In order to provide as much detail as possible on the changes to the *Milk Act*, some of the content outlined further below include subject matter that may need to be addressed via regulation.

## Proposed Legislative and Regulatory Changes

### End Use Pricing

#### Current context

#### **Support consistency in the end use pricing of milk products**

When the *Milk Act* was created, the dairy landscape was very different to what it is today. Dairy products were typically manufactured directly from milk received from a dairy farm or by combining cream with milk received from a dairy farm/skim milk.

Today, intermediary milk products (ingredients) such as milk protein concentrates are increasingly used in the manufacturing of dairy products. The milk found in dairy products no longer strictly comes from unprocessed milk received from a dairy farm and cream. Industrial dairy products are being manufactured by re-combining intermediary milk ingredients to make a finished dairy product, with dairy product recipes increasingly calling for the use of such ingredients.

The Canadian Milk Supply Management Committee (CMSMC) serves as the key national body for policy development and discussions regarding the dairy production and processing sectors. The CMSMC, chaired by the Canadian Dairy Commission (CDC), agreed on pricing policies which require all milk to be priced according to its end use. These policies are to apply to both processors who purchase from dairy marketing boards (called milk buyers) and those who purchase dairy ingredients from other processors to then make a dairy product (called non-milk buyers).

Under the current Canadian dairy supply management system, all manufacturers of dairy products manufactured from cow's milk are intended to pay the same price for the milk components of butterfat, protein and other milk solids based on the class of milk (which is tied to end use). In Ontario, the price dairy farmers receive for the milk they produce is set by the DFO based on the milk's intended use and the national prices set by the CMSMC. This price varies and depends on how the milk will be used. For example, milk sold to make cheese has a different price than milk sold to make butter as the milk component prices are different for those products.

The implementation of this pricing system is limited by the existing definition of a regulated product under the *Milk Act*, which limits regulated products to milk, cream or cheese. Regulations under the *Milk Act* do not provide the DFO with authority to regulate non-milk buyers who purchase milk ingredients from milk buyers to manufacture dairy products. Amendments are required to ensure that all processors of dairy products are treated equally in terms of the cost of their milk and are subject to equivalent rules.

## Proposal:

### **Expanding the definition of a regulated product**

Proposal to amend section 1 of the *Milk Act* to expand the definition of a regulated product to include milk products, or milk products used as ingredients in processing. A number of consequential changes are also required, throughout the Act.

If the Milk Act amendments are introduced and passed, they would be followed by subsequent regulatory amendments to Regulation 760: MILK AND FARM SEPARATED CREAM – PLAN and O. Reg. 354/95: MILK AND FARM-SEPARATED CREAM – MARKETING to:

- add milk products, or milk products used as ingredients in processing, as a regulated product under the DFO's marketing plan, and;
- expand the board's existing authorities (including price setting) to include these products.

With the proposed legislative and regulatory amendments, DFO could regulate persons marketing regulated milk products. There is recognition that this may impact existing non-milk buyers who are utilizing intermediary milk ingredients to make finished dairy products. These entities are currently not governed by the regulated marketing aspects of the *Milk Act* (due to the definition of a regulated product within the Act) and may be subjected to additional reporting and audit requirements if the proposed amendments are made.

#### **Questions:**

- 1) *Are there any concerns with the proposal to support consistency in the end use pricing of milk products? If yes, please describe.*
- 2) *What are the perceived effects of the proposal to the dairy sector in Ontario?*

## Dairy Legislative Alignment

### Current context

#### **Optimal alignment of food safety regulation-making authority**

The *Milk Act* empowers the OFPMC, an agency of OMAFA administering both the *Milk Act* and the *Farm Products Marketing Act* (FPMA), to make most regulations for the purposes of the *Milk Act*.

As the scope of the *Milk Act* includes the quality of milk and milk products (from cows and goats) in addition to the marketing of cow milk, milk as a food is unique in being governed by a stand-alone act that is accountable to a government agency where food safety is not part of their core mandate.<sup>1</sup> Other supply-managed commodities in Ontario (eggs, chicken, turkey) and most other foods fall under more general food safety legislation across their supply chains where Cabinet (Lieutenant Governor in Council) has authority for making food safety regulations.

It is generally accepted that modern approaches to food safety oversight include enabling modern food safety statutes that allow for risk-based regulatory oversight across all foods and that is also directly accountable to government.

#### **Optimal alignment of food safety oversight for milk in Ontario**

The *Milk Act* and Regulations 761 and 753 provide the legislative and regulatory framework in Ontario for the production, transportation, processing and distribution of only cow and goat milk. Food safety and quality requirements for goat milk were added incrementally to regulations over time, although unlike cow milk, goat milk is not part of a regulated marketing scheme. Food safety regulatory oversight for milk from species such as sheep and water buffalo is currently under *the HPPA* and the Ontario Regulation 493/17 – Food Premises (Food Premises Regulation), administered by the Ministry of Health. The regulation applies to all food premises (including dairy plants and dairy farms) and is enforced by local Public Health Units.

A consistent regulatory oversight framework in Ontario for the production, transportation, and processing of milk from all species would align with the approach found in most other jurisdictions with a competitive dairy industry. Milk and milk products are inherently higher risk foods in terms of food safety. The same food safety risks exist for milk from different species (cow, goat, sheep, water buffalo) and thus inspection oversight for all milking species should be under a common regulatory framework.

In addition, Ontario's milk processing industry has been seeking regulatory modernization for milk from other species for consistency. Most competing North

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<sup>1</sup> The OFPMC is accountable for the conduct and impact of Ontario's regulated marketing system.

American dairy producing/processing jurisdictions, including Quebec, regulate the food safety and quality of all or most milk-producing species through consolidated and streamlined food safety legislation, rather than under marketing legislation.

In 2019, The Office of the Auditor General of Ontario (OAGO) recommended that OMAFA include inspection oversight of milk from species such as sheep and water buffalo in its dairy food safety program.

In summary, the current Ontario framework lacks more modern food safety standards and requirements for milk and dairy products; a comprehensive and consolidated food safety legislative framework for all milking species (sheep, goat, water buffalo); and remains an outlier in Canada as the only food safety framework where most of the oversight is under a government agency (OFPMC) rather than under Cabinet-level authority.

#### Proposal:

Given the challenges of the current legislation in Ontario governing milk as described above, OMAFA proposes amendments to the *Milk Act* and the FSQA that would enable (at a future date) the transfer of food safety and quality provisions from the *Milk Act* and its regulations to a new, modern and outcome-based food safety regulation for milk from all species in Ontario (e.g., cow, goat, sheep, water buffalo) under FSQA. Marketing provisions for cow milk would remain under the *Milk Act*.

#### **Consolidating the regulation of dairy food safety under the *Food Safety and Quality Act, 2001 (FSQA)***

The FSQA provides a broad and enabling framework for regulating both the quality and safety of food, agricultural and aquatic commodities. It was designed to consolidate and modernize the food safety related provisions and quality standards of several past statutes.<sup>2</sup> As such, the FSQA can provide Ontario with consistent standards and tools for regulating the food safety for any foods under OMAFA inspection oversight and is best suited to regulate milk from all species of animals.

The FSQA also includes a comprehensive set of tools for inspection and enforcement as well as broader authority by Cabinet (Lieutenant Governor in Council) to implement food safety programs to address any food safety or quality issues and concerns in the dairy industry.

Finally, the FSQA also provides a framework for the Minister to delegate authorities for administration and enforcement of designated legislation, including a specific reference to a marketing board as a potential party to an agreement. This would allow for the Dairy Farmers of Ontario (DFO) – currently the administrative authority designated

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<sup>2</sup> Since enactment of the FSQA, older statutes such as the Meat Inspection Act, the Dead Animal Disposal Act and the Farm Products Grades and Sales Act have been repealed and the relevant regulatory requirements have been updated under the FSQA. In addition, regulations from the Livestock and Livestock Products Act have also been updated under the FSQA

under the *Milk Act* to administer regulations for the cow milk quality program including inspections of cow farms and requirements related to the transportation of cow milk from farms to dairy processors – to continue in this capacity if these areas were to be regulated under the FSQA.

OMAFA is proposing amendments to the *Milk Act* and the FSQA to enable the transfer of the food safety requirements from the *Milk Act* and its regulations-- via the creation of a modern regulation for the production, transportation, and processing of milk and milk products from all milking species—to the FSQA. This transfer, via the creation of new regulations under the FSQA, would occur at a future time, subject to approval of the proposed legislative amendments in this proposal and approval to consult on the specifics of the regulations. There would also be consequential amendments to the HPPA, to replace references to the *Milk Act* with FSQA. The key amendments proposed to *Milk Act*, the FSQA, and the HPPA are included in the table below.

Key Proposed Amendments include:

<i>Milk Act</i>	<i>Food Safety and Quality Act, 2001</i>	<i>Health Protection and Promotion Act</i>
<ul style="list-style-type: none"> <li>Remove food safety and quality requirements related to the production, processing and distribution of milk and milk products;</li> <li>Update and consolidate the regulated marketing provisions.</li> <li>Amend or move framework to the FSQA that currently designates DFO as administrative authority for aspects related to the production and transportation of cow milk).</li> <li>Remove or amend provisions related to the above.</li> </ul>	<ul style="list-style-type: none"> <li>Revise definition of 'food' to remove exemption for milk and milk products;<sup>3</sup></li> <li>Allow for the keeping or raising of animals for animal products including milk as 'regulatable activity';</li> <li>Any necessary amendments to allow for DFO to be able to continue with fees or penalties for funding to administer on-farm cow milk quality program.</li> </ul>	Remove the reference to licensing 'under the Milk Act' and replace with the appropriate reference to licensing under the FSQA

<sup>3</sup> Currently under the FSQA, food means food or drink intended for human consumption but does not currently include milk and milk products (as defined in the Milk Act), or liquor (as defined in the Liquor Licence and Control Act, 2019).



If approved, any changes to the *Milk Act*, FSQA, and HPPA would not come into effect until regulations for production, transportation, and processing of all milk under the FSQA and associated amendments to regulations under the *Milk Act* are developed.

Subject to approval of the proposed statutory amendments and further consultations, anticipated regulatory proposals would include:

- Development of new outcome-based food safety regulation under the FSQA for the production, transportation, and processing of milk from all species. These regulations would consider requirements for:
  - The licensing of processing plants and dairy farms that process or produce milk from all species (e.g., cow, goat, sheep, and water buffalo)
  - New outcome-based food safety requirements, including requirements for written programs related to pest control, and maintenance of equipment.
- Development of a delegation regulation and agreement under the FSQA in order for DFO to continue as the program delivery agent for on-farm inspection of cow milk production.
- An administrative penalties regulation under the FSQA for DFO to continue with the current penalties scheme.
- Revised regulations to remove food safety and quality requirements under the *Milk Act* and retain all marketing provisions for cow milk and update where appropriate.

*Questions:*

- 3) *Are there any concerns with the proposal to enable the transfer of food safety requirements from the Milk Act to the FSQA? If yes, please describe.*
- 4) *Are there any concerns with the proposed key amendments to the Milk Act, the FSQA? If yes, please describe.*

## **Consultation**

The ministry is seeking feedback from dairy processors and producers, industry associations, agri-food businesses, and members of the public on the proposed amendments as outlined in this paper. Your feedback will be considered during the development of proposed changes to the Acts.

You may submit feedback by going to the Ontario's Regulatory Registry at the following link <https://www.ontariocanada.com/registry/> and clicking on Current Proposals.

You may also provide your feedback by mail to the address below:

**Ontario Ministry of Agriculture, Food and Agribusiness (OMAFRA)**

**Food Safety and Environmental Policy Branch**

**1 Stone Road West, 2nd Floor SW**

**Guelph, Ontario N1G 4Y2**

***Attention: Consultation on Proposal to Amend the Milk Act and the Food Safety and Quality Act, 2001***

### **Your Privacy Matters**

To submit anonymous feedback, please mail your submission to the address above without providing any contact information. If you provide contact information (including where the contact information is personal contact information), we may use it to follow up with you on your comments or to provide you with future consultation materials.

Your feedback is necessary in order to help the Ministry of Agriculture, Food and Agribusiness understand how the proposals may impact the dairy industry and how the *Milk Act* and the *Food Safety and Quality Act, 2001* (FSQA) can be improved more generally. This feedback will be used by the Ministry of Agriculture, Food and Agribusiness to help develop a more detailed proposal for amendments to the *Milk Act* and the *Food Safety and Quality Act, 2001* (FSQA).

Information collected as part of this consultation is subject to the *Freedom of Information and Protection of Privacy Act*.