

Dairy Quarterly Legal Update: January–March of 2021

Below is a listing of legal and regulatory developments impacting the dairy industry during the first calendar quarter of 2021.

Dean Required to Pay \$29 Million to USDA for Unpaid Federal Milk Marketing Order Pool Obligations and Federal Dairy Check-Off Program Debt

On January 15, 2021, the U.S. Bankruptcy Court for the Southern District of Texas entered a [Stipulation and Order](#) agreement between Southern Foods Group, LLC, and the U. S. Department of Justice. The agreement requires Dean to pay \$29,082,182 or 90% of unpaid amounts owed for milk marketed in April and May 2020, within thirty days to the U.S. Department of Agriculture (USDA) for Federal Milk Marketing Order (FMMO) pool obligations. Dean must also pay marketing order program obligations to the National Dairy Promotion Board and the National Fluid Milk Processor Promotion Board. USDA's Agricultural Marketing Service subsequently [announced](#) the agreement on January 19, 2021. There are post-petition debts that remained the obligation of the bankruptcy estate, not the purchasers of any assets (DFA, etc.).

Dairy Farmers of America Settles with Maryland & Virginia Dairy Cooperative, Food Lion

On February 24, 2021, the U.S. District Court for the Middle District of North Carolina filed an entry of settlement in a suit against Dairy Farmers of America (DFA), which sought to compel the company to divest one of the three North Carolina Dean Foods processing facilities that it obtained in its April 2020 bankruptcy sale acquisition of Dean Foods. *Food Lion, LLC v. Dairy Farmers of America, Inc.*, No. [1:20-cv-00442](#). The [complaint](#), filed by Food Lion, LLC and Maryland & Virginia Milk Producers Cooperative Association (MDVA) in May 2020, claimed that the sale produced anti-competitive effects because it allowed DFA regional control over both raw milk supply and processed and packaged dairy product markets. According to a March 3, 2021 [mediator's report](#), complete settlement of the case was reached at mediation conferences held February 22 and 23, 2021. On April 2, 2021, the parties filed a Stipulation of Dismissal with Prejudice. The mediator's report states that a settlement agreement is in preparation.

DFA Sells Two Dairy Plants to Complete Antitrust Stipulation for Dean Foods Purchase

As of March 24, 2021, Dairy Farmers of America (DFA) has finalized the sale of two former Dean Foods dairy processing plants (located in De Pere, Wisconsin and Harvard, Illinois) to a partnership between New Dairy Opco and Select Milk Producers, according to an [announcement](#) by investment banking and bankruptcy restructuring firm Capstone Headwaters, who represented the buyers. New Dairy Opco purchased the majority of Borden Dairy Company's assets out of its bankruptcy in July 2020. The sale was part of an October 2020 [stipulated judgment](#) entered in the U.S. District Court for the Northern District of Illinois [ordering the divestiture](#) as the conclusion of the U.S. Department of Justice's Antitrust Division [investigation](#) into the DFA purchase of Dean Foods assets. *United States of America v. Dairy Farmers of America, Inc.*, No. [1:20-cv-02658](#). On December 17, 2020, the stipulated judgment was amended to drop a former Dean Foods dairy plant in Franklin, Massachusetts (and ancillary



facilities) from the original list of three dairy plants acquired by DFA subject to the divestiture order. The purchase price for the two sold plants was undisclosed.

USDA Announces New 'Pandemic Assistance for Producers' Initiative

On March 24, 2021, the U.S. Department of Agriculture [announced](#) its new \$6 billion financial assistance initiative, **[USDA Pandemic Assistance for Producers](#)**. Combining existing programs with new spending, the initiative aims to resolve disparities in previous assistance related to COVID-19. It includes the new **[Dairy Donation Program](#)**, created by a \$400 million appropriation from the Consolidated Appropriation Act of 2021 and enacted December 27, 2020. The program will be administered in conjunction with the 2018 Farm Bill-authorized existing program, the Milk Donation Reimbursement Program. However, the new program is intended to reimburse at a **higher rate** than the Federal Milk Marketing Order (FMMO) minimum producer price. The program is provided with funding at the following levels: 2019—\$9 million; 2020—\$5 million; and \$400 million for 2021 to reimburse processors and cooperatives for charitable food system donations of multiple dairy products. Reimbursement can be made for donations retroactive to December 27, 2020. Preliminary details are available from the Agricultural Marketing Service: [USDA Provides Notice of Retroactive Reimbursements Under the Dairy Donation Program, Encourages Donation of Surplus Dairy Products](#).

Pennsylvania Milk Marketing Board Releases Final Regulation on Cooperative Over-Order Premium Disclosure

On March 2, 2021, the Pennsylvania Milk Marketing Board delivered to the Pennsylvania Independent Regulatory Review Commission (IRRC) and the General Assembly Agriculture Committees the [final form regulation packet](#) for [Regulation 47-20](#), "Transactions Between Dealers and Producers; Payment." The regulation amends 7 Pa. Code § 143.15 to require cooperatives to furnish a line item on members' monthly statements that identifies the over-order premium (OOP) amount paid, calculated in a prescribed manner consistent with the financial structure of a dairy cooperative. By taking no action by April 14, 2021, both the Pennsylvania House and Senate Agriculture Committees are deemed to have approved the regulation. On April 15, 2021, after a [hearing](#), the IRRC entered an order approving the regulation. Once approved by the Pennsylvania Office of Attorney General for "form and legality," it will become effective 120 days after PA Bulletin publication as a final form regulation.

California to Hold Referendum on Discontinuing State Quota Premium System

On January 25, 2021, the California Department of Food and Agriculture (CDFA) issued an [order](#) requesting a producer referendum to implement a flat quota rate of \$1.43 per hundredweight (cwt) for all counties in the state and to eliminate the current California state Quota Implementation Plan (QIP) as of March 1, 2025, via a proposed [Sunset Plan](#). Under the current state QIP program, California dairy farmers receive a premium, funded through California "milk pool" deductions, for quota-covered raw milk (which is unavailable for non-quota milk). [According to CDFA](#), the referendum voting period is March 4, 2021 through June 1, 2021. For an excellent history of California's Quota system before and after the establishment of the California FMMO, see Hoard's article titled [California's quota has been 60-plus years of compromise](#).

Pennsylvania Government-Supplied Farm Bulk Tank Calibration Services Phased Out

On January 27, 2021, the Pennsylvania Milk Marketing Board (PMMB) issued a bulletin (No. [1591](#)) declaring that, for cooperative members, it will phase out farm bulk tank calibration services beginning April 1, 2021 and will no longer perform such services by May 1, 2021. According to the bulletin, the PMMB will continue to provide this service for independent producers until the board permanently ends the farm bulk tank calibration program on December 31, 2021.



USDA and HHS Release Dietary Guidelines for Americans 2020–2025

On December 29, 2020, the U.S. Department of Agriculture (USDA), in partnership with Health and Human Services (HHS), [announced](#) the publication of [Dietary Guidelines for Americans, 2020–2025](#). The guidelines include, for the first time, nutrition needs for children from birth until twenty-three months and focus food choices for all age groups of nutrient-dense foods, which contain the necessary vitamins and minerals with minimal or no additional sugars, saturated fats, or sodium. For persons aged two and older, the guidelines advise that saturated fat be limited to ten percent of daily caloric intake. While the dairy guidelines for persons aged two and older call for consumption of fat-free and low-fat milk, yogurt, and cheese, and state that a cup of whole milk contains seventy-five percent more calories than a cup of fat-free milk (146 calories as opposed to 83), the recommended daily dairy servings for children ages twelve months through twenty-three months are based upon consumption of whole milk.

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