

Quarterly Dairy Legal Update: October–December of 2021

Below is a listing of legal and regulatory developments impacting the dairy industry during the fourth calendar quarter of 2021. Additionally, recently published dairy resources of interest are included at the end of this update.

1. USDA-Related Actions

U.S. Department of Agriculture (USDA) Announces 2022 Dairy Margin Coverage Program Enrollment

On December 8, 2021, the U.S. Department of Agriculture’s (USDA) Farm Service Agency (FSA) [announced](#) the 2022 enrollment period opening for the [Dairy Margin Coverage \(DMC\) Program](#), which pays dairy producers when the difference between the all-milk price and the average feed price drops below a [producer-selected dollar amount](#). According to the announcement, USDA has updated the program’s feed cost calculation and will use 100% premium alfalfa hay instead of 50%. Additionally, operations with less than five (5) million pounds of past production may enroll in Supplemental DMC for 2022 and may also submit their 2019 data for retroactive payments if they were previously unable to enroll in the program. The signup period for both DMC and Supplemental DMC is open from December 13, 2021, until February 18, 2022.

2. Antitrust Dairy Issues

Antitrust Review Completed of Kraft Heinz Cheese Lines

On November 10, 2021, the U.S. Department of Justice’s (DOJ) Antitrust Division [announced](#) the completion of its review of the French dairy company B.S.A. S.A.’s (Lactalis) acquisition of the Kraft Heinz Company’s U.S. natural cheese business and [filed](#) a civil antitrust lawsuit in the U.S. District Court for the District of Columbia. The suit demands, via the proposed pre-negotiated settlement agreement, the divestiture of Kraft Heinz’s Athenos feta cheese brand and its Polly-O ricotta cheese brand to other buyers in order for Lactalis to achieve U.S. antitrust law compliance for the purchase. Lactalis presently owns the President feta and Galbani ricotta cheese brands. Under the settlement, Athenos will be sold to Emmi Roth USA Inc. and Polly-O to BelGioioso Cheese, Inc., or to approved alternative buyers. The proposed settlement was [published](#) in the Federal Register (86 FR 73319) on December 27, 2021, with a 60-day public comment period, after which the D.C. Circuit Court of Appeals can act.



3. U.S. Regional Dairy Issues

Organic Organizations Allege Danone’s Horizon Contract Terminations Violate B Corp “Declaration of Interdependence”

On November 8, 2021, eleven (11) organic producer and consumer interest groups [submitted](#) a complaint to B Lab, the certifier for socially and environmentally responsive “B Corporations,” alleging that Danone North America (Danone N.A.) violated its [B Corp Declaration of Interdependence](#) when its Horizon Organic wholly-owned subsidiary decided to terminate contracts with eighty-nine (89) Northeast organic dairy farms. [See entry below for additional information on this topic.]

Danone North America Extends Northeast Horizon Organic Contracts Until February 2023

On December 13, 2021, Danone North America, owner of Horizon Organic, [sent](#) a letter to the Northeast Dairy Producers Alliance (NODPA) offering to extend the purchase contracts of the eighty-nine (89) producers terminated by the company in August 2021. According to the letter, Danone has contacted the affected producers and offered them an additional six-month contract extension, totaling eighteen months instead of the original twelve, ending on February 28, 2023, instead of August 31, 2022. Additionally, Danone will pay an additional fee per hundredweight purchased during the extended six-month period. The contract extension and additional payment were measures [requested](#) by NODPA in an October 2021 informal petition. [Maine Governor Janet Mills](#) and [Senator Chuck Schumer](#) issued statements in response to the contract extensions.

4. International Issues

Hershey Partners with New Zealand-based a2 Milk Company to Release New Chocolate Milk

On October 26, 2021, New-Zealand-based a2 Milk Company [announced](#) that it is partnering with The Hershey Company to co-brand a line of chocolate milk made with 2% reduced fat a2 milk. According to the announcement, “a2 Milk comes from cows that naturally produce only the A2 protein rather than the combination of A1 and A2 proteins contained in most dairy products. Published research suggests a2 Milk that naturally contains the A2 protein may help avoid stomach discomfort in some people.” The product was planned to be available in retail outlets in January 2022.

Additional Dairy Resources of Interest

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Oct. 2021)

Innovation Center for U.S. Dairy, [U.S. Dairy 2020 Sustainability Report](#) (Oct. 2021)

Dairy Business/John Geuss, [Long Term Trends in Milk Pricing](#) (Oct. 1, 2021)

Dairy Business/Bob Gray, [The Agriculture Labor Dilemma in the Dairy Industry](#) (Oct. 1, 2021)

Hoard’s Dairyman, [The Flip-Flop on Fats Has Spun Heads](#) (Oct. 21, 2021)

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Nov. 2021)

National Milk Producers Federation, [Dairy Data Highlights](#) (Nov. 2021)

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Dec. 2021)



Dairy Foods, 2021 State of the Industry: Milk is on a long and winding road (Nov. 5, 2021)

Fairlife posts double-digit sales gains

Rank	Refrigerated skim/low-fat milk: top 10 brands	Dollar sales (millions)	% change vs. year ago	Unit sales (millions)	% change vs. year ago
1	Private label	\$4,269.3	-0.8	1,595.3	-4.5
2	Hood Lactaid	\$516.2	7.7	106.4	7.4
3	Horizon Organic	\$320.5	-0.3	59.3	-2.1
4	Fairlife	\$296.8	22.6	79.9	22.5
5	All Dean Foods brands	\$295.3	-53.6	94.3	-53.4
6	Prairie Farms	\$173.0	11.9	55.3	4.4
7	Hiland	\$99.1	-8.2	31.1	-12.8
8	Organic Valley	\$87.9	3.3	17.6	2.2
9	Hood	\$82.3	0.2	25.1	-5.0
10	All Borden Dairy brands	\$68.7	-4.8	21.1	-8.1
Total subcategory		\$7,174.4	-2.8	2,379.8	-6.3

Source: Source: IRI, a Chicago-based market research firm, 52 weeks ending Sept. 5, 2021. Total U.S. multi-outlet with c-store (supermarkets, drugstores, mass market retailers, gas/c-stores, military commissaries and select club and dollar retail chains). Note: Sales rankings shown are for individual brand line listings, not total brand listings. • Created with [Datawrapper](#)

Eight top-10 brands post dollar sales gains

Rank	Refrigerated flavored milk/buttermilk/eggnog: top 10 brands	Dollar sales (millions)	% change vs. year ago	Unit sales (millions)	% change vs. year ago
1	Private label	\$403.5	6.7	170.6	1.9
2	All Dean Foods brands	\$155.1	-23.1	61.9	-25.4
3	Fairlife	\$137.2	15.9	39.3	15.4
4	Prairie Farms	\$123.6	21.6	56.1	15.1
5	All Borden Dairy brands	\$119.0	12.3	54.7	8.6
6	Hiland	\$81.9	5.1	39.3	-1.8
7	Hood	\$66.7	9.1	20.4	5.9
8	Other LALA brands	\$44.0	15.4	13.7	10.0
9	Darigold	\$42.3	-1.7	16.6	-1.5
10	Anderson Erickson	\$24.6	7.8	10	4.4
Total subcategory		\$1,646.5	4.8	658.2	1.0

Source: Source: IRI, a Chicago-based market research firm, 52 weeks ending Sept. 5, 2021. Total U.S. multi-outlet with c-store (supermarkets, drugstores, mass market retailers, gas/c-stores, military commissaries and select club and dollar retail chains). Note: Sales rankings shown are for individual brand line listings, not total brand listings. • Created with [Datawrapper](#)



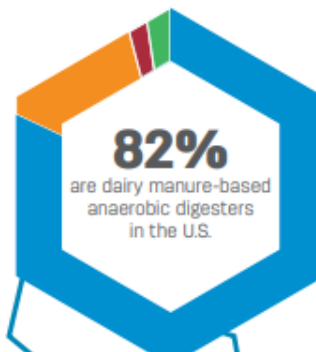
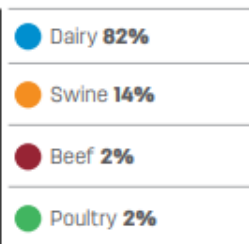
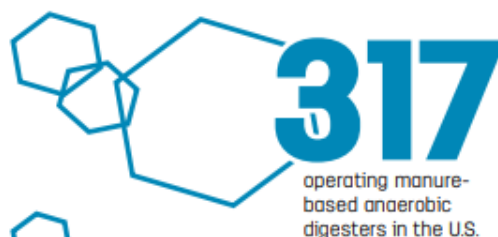
Progressive Dairy, [In Focus: Digester database updates show large spike in RNG](#) (Dec. 11, 2021) Full size graphic available [here](#).

InFOCUS

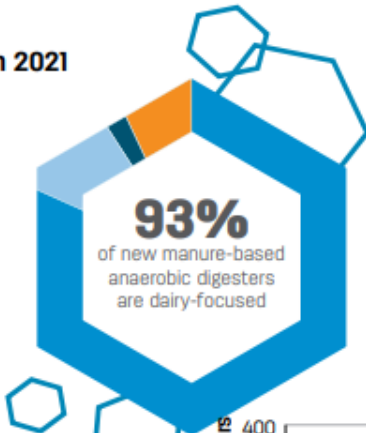
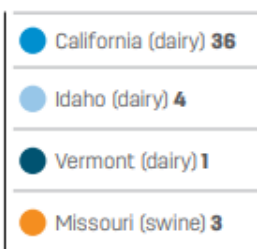
Digester database updates show large spike in RNG

In early November, AgSTAR announced updates to its comprehensive U.S. livestock anaerobic digester database. New projects, as well as updates to existing or planned projects, are now up to date though September 2021. Here are some highlights:

Total projects in the U.S.



New projects added in 2021

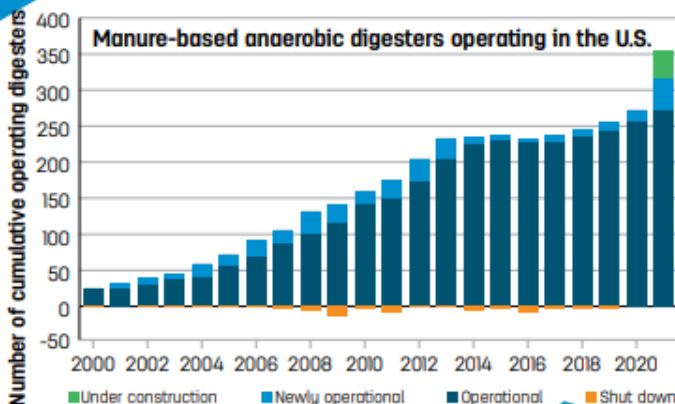


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anaerobic digester systems have come online this year. The majority were covered lagoons, while three projects were complete mix systems.



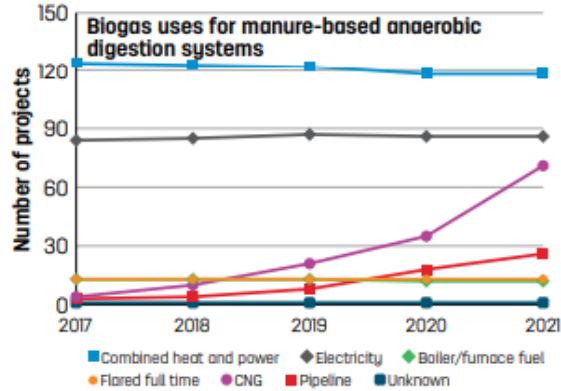
There are projects under construction or undergoing modification to upgrade biogas to renewable natural gas (RNG).





Renewable natural gas grows

RNG projects, including pipeline injection and compressed natural gas (CNG) for vehicle fuel or other uses, have risen steadily and significantly since 2017. There are currently 97 manure-based anaerobic digester systems producing RNG, up from only seven projects five years ago. The rise in the number of systems producing CNG has been particularly sharp in the last year. All 44 of the anaerobic digester systems that have come online this year are producing renewable natural gas (RNG). Most of the additional 38 systems currently under construction are intended to produce RNG as well, either for pipeline injection or use as vehicle fuel. Seven existing power generation projects are in the construction phase to switch to RNG production, and several more RNG project conversions are in the planning and development stages.



Emission reductions



Annual emission reductions resulting from U.S. livestock digesters have increased from approximately 5.27 million metric tons of CO2 equivalent (MMTCO2e) in 2020 to 5.95 MMTCO2e as of September 2021. Reductions in emissions of this size are equivalent to removing 1.3 million passenger vehicles from the road for one year.

Energy production

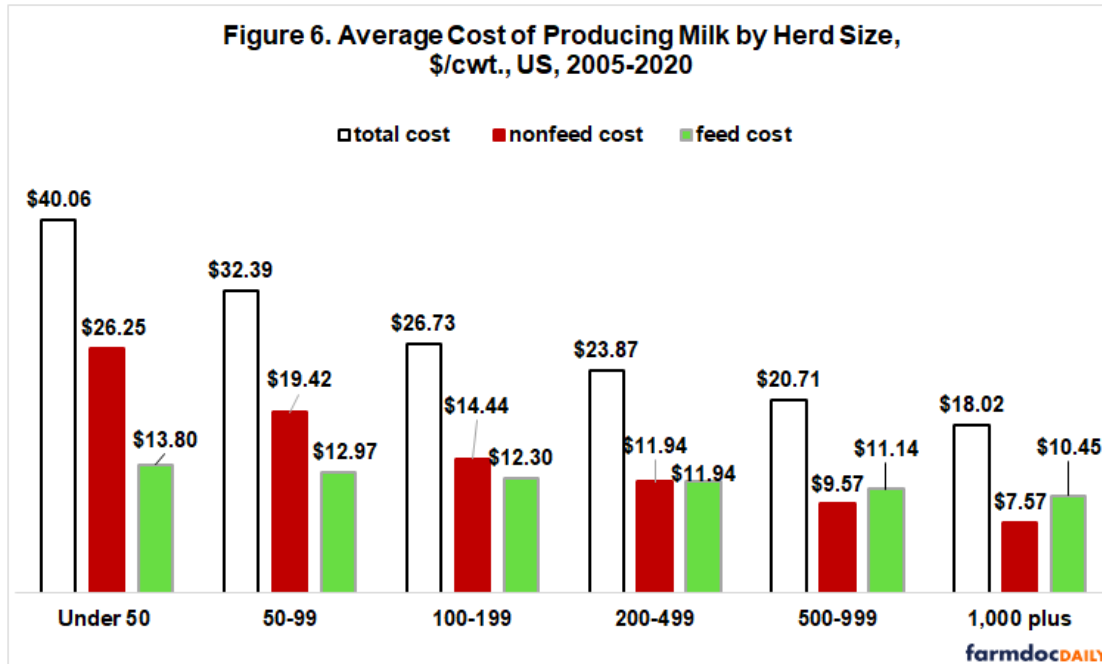
Annual energy production from U.S. livestock digesters has increased from 159 million megawatt hours (MWh) equivalent in 2020 to 173 million MWh equivalent as of September 2021. Energy production of this amount is equivalent to 145,623 homes' annual electricity use.



Editor's note: AgSTAR compiles this data from a variety of voluntary sources. AgSTAR cannot guarantee the accuracy of the information in the anaerobic digester database, and recognizes it is not exhaustive and may not include data for every U.S. livestock farm anaerobic project.



University of Illinois/Farm Doc Daily, [U.S. Dairy Market and Policy Overview](#) (Nov. 22, 2021)



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CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation’s leading source of agricultural and food law research and information.

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