

## Dairy Quarterly Legal Update: January-March of 2022

Below is a listing of legal and regulatory developments impacting the dairy industry during the first calendar quarter of 2022. Additionally, recently published dairy resources of interest are included at the end of this update.

### 1. Pennsylvania Milk Marketing Board (PMMB) Actions

#### **PMMB Continues Pennsylvania Order-Premium Despite Pennsylvania Farm Bureau Opposition**

On March 2, 2022, the Pennsylvania Milk Marketing Board (PMMB) held its regularly scheduled twice-annual public hearing to receive evidence on the level and duration of its Class I Over-Order Premium (OOP). This was the first such occasion since the Pennsylvania Farm Bureau (PFB) adopted a recommendation that the OOP be eliminated (along with the minimum wholesale and minimum retail price) in its 2022 Policy Book. The PMMB received pre-submitted and live testimony from various stakeholders with overt criticism and opposition to the continuation of various aspects of the OOP and its administration, as well as entertaining and disposing of motions to strike some testimony as beyond the scope of a hearing to determine the amount of an OOP and instead addressing aspects of its continued administration. Most notably, this included testimony from PFB Executive Committee and Board Member John Painter II, that: (a) "PFB believes that, while the over-order premium does benefit some dairy farmers, its time has passed . . .;" (b) ". . . an over-order premium system that cannot be meaningfully changed without inviting a swift rebuke by way of the federal Commerce Clause is not a system capable of structural fairness and equity . . .;" and (c) ". . . [PFB] therefore requests that the upcoming over-order premium be set at \$0.00 indefinitely for all milk marketing areas." Ultimately, on March 22, 2022, the PMMB issued Official General Order No. A-1013, continuing the current \$1.00 per hundredweight Over-Order Premium (OOP) for all Class I milk produced, processed, and sold in Pennsylvania for the next six (6) months, effective April 1, 2022, until September 30, 2022, and stated therein, "While there may be issues with the over-order premium, we are more persuaded by the testimony regarding the positive impact of the over-order premium than we are by testimony regarding issues with the over-order premium." The \$1 over-order premium has remained the same since April 2019.

### 2. U.S. Department of Agriculture (USDA) Actions

#### **USDA Publishes Study on Cost of Processing Cheese, Whey, Butter, and Nonfat Dry Milk**

On February 14, 2022, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) announced the release of a study titled "Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants." The study may assist dairy stakeholder in the analysis and evaluation the so-called "make allowance" calculations incorporated into FMMO pricing. Using data from fifty-seven (57) plants across the United States – eight (8) plants from the Northeast, twenty-five (25) plants from the Midwest, and twenty-four (24) plants from the western United States – about 80% of which were cooperatively owned and operated, the study sought to answer the following questions: 1) what is included in the cost of processing, or the costs of "transforming milk and other dairy ingredients into the dairy products of interest," and 2) how are costs allocated across the products produced.



The study focused only on processing costs and did not consider the cost of the milk and dairy ingredients or the value of the final products or try to estimate the profits of the plants. The researchers collected data on ten (10) cheese plants, eight (8) whey plants, twelve (12) butter plants, and twenty-seven (27) nonfat dry milk plants. To control for the differences in processing complexity, the researchers assigned product transformation values to the various products ranging from one (1) to ten (10), with milk and wet whey having a value of one (1), butter a value of six (6), cheese a value of eight (8), and nonfat milk powder a value of nine (9). The study found that the cost of processing for nonfat dry milk ranged from \$0.21-0.43 per pound, butter from \$0.11-0.23 per pound, cheddar cheese from \$0.14-0.38 per pound, and dry whey \$0.19-0.35 per pound.

### 3. National Dairy Stakeholders' Actions & Issues

#### **The International Dairy Foods Association (IDFA) Releases Working Paper on 'Modernizing US Milk Pricing'**

On January 25, 2022, the International Dairy Foods Association (IDFA) [announced](#) the publication of a new commissioned working paper titled '[Modernizing US Milk Pricing: An Exploration.](#)' Written by Dr. Marin Bozic and Blimling & Associates, the paper describes challenges to current Class I fluid milk pricing system, opportunities and obstacles for dairy exports, and potential pricing models from other countries. According to the paper, the current pricing system, which incentivizes the sale of beverage-ready Class I fluid milk, is unsustainable as fluid milk sales decline and milk used for manufacturing increases. In addition, the paper found that, although multiple opportunities exist for increasing export demand, milk pricing in the United States, which does not easily accommodate long-term fixed prices for overseas buyers, is not as flexible as its EU and New Zealand competitors. The paper also notes that the milk regulations in other countries focus more on trade, sustainability, and information services, as opposed to the United States, which [a]mong major exporters ... is the only country that attempts to implement minimum price regulation."

### 4. Regional Dairy Actions & Issues

#### **Organic Valley Offers Letters of Intent to 80 Northeast Organic Dairy Producers**

On March 8, 2022, Vermont Agency of Agriculture, Food and Markets (VAAF) [announced](#) that Wisconsin-based CROPP Cooperative (d/b/a *Organic Valley*) has issued letters of intent to eighty (80) Northeast organic dairy farms offering "a market for their milk." Organic Valley's actions follow the Danone (d/b/a *Horizon Organic*) August 2021 announcement that it would terminate over one hundred (100) Northeast organic dairy farms as raw milk suppliers. According to Organic Valley, ten Northeast organic dairy producers had already become members of Organic Valley at the time of the announcement.

#### **Stonyfield CEO Establishes "Northeast Organic Family Farm Partnership" Program**

In January 2022, Gary Hirshberg, Stonyfield co-founder and CEO, [launched](#) the Northeast Organic Family Farm Partnership in response to Danone's August 2021 organic producer contract terminations. The endeavor aims to establish a partnership between Northeast organic dairy farmers and processors, consumers, grocers, restaurants, and institutional food service sites to generate demand for products from the region's family operated organic dairy farms. The partnership encourages entities and individuals to pledge to purchase at least one quarter of their weekly dairy products from [brand partners](#) using Northeast organic milk.

#### **North Dakota Waives Hours of Service for Milk Haulers Due to Driver Shortage**

On January 25, 2022, North Dakota Governor Doug Burgum [issued](#) Executive Order (EO) 2022-02, waiving hours of service requirements for truck drivers delivering milk in North Dakota under Federal Motor Carrier Safety Administration (FMCSA) Regulations and North Dakota state law. According to a [corresponding announcement](#), the governor issued the order in response to a North Dakota milk distributor's closure due to a lack of certified drivers. Additionally, the administration states that drivers with an expired commercial driver's license (CDL) are not required to meet new federal Entry Level Driving Training qualifications to renew their licenses and that both Governor Burgum and



North Dakota Agriculture Commissioner Doug Goehring intend to send a letter encouraging those with expired CDLs to renew their licenses. Under the order, effective for thirty (30) days and drivers must comply with all other state and federal operational requirements and North Dakota Milk Marketing Board milk hauler regulations.

### **New Jersey Law Directs State Department of Agriculture to Reimburse Paid Annual Premiums to Dairy Farmers**

On January 18, 2022, New Jersey Governor Phil Murphy [signed into law](#) S.3465, an Act appropriating \$125,000 to the state Department of Agriculture to reimburse enrolled New Jersey dairy farmers their annual premiums paid for coverage under the federal Dairy Margin Coverage Program. More specifically, the Act provides that the reimbursement would cover “up to the amount of the premium for coverage for the first 5,000,000 pounds of annual milk production per farm, the first tier of coverage under the program.” The Department of Agriculture is responsible for developing rules and procedures for disbursement of funds. The Act provisions became effective on the date of enactment.

## **5. International Dairy Actions & Issues**

### **Panel Finds Canada’s Tariff-Rate Quota Allocation in Violation of USMCA Agreement and Canadian Government Proposes New Allocation and Administration Changes as a Result**

On January 4, 2022, U.S. Trade Representative Katherine Tai [announced](#) that a dispute settlement panel, convened under the United States-Mexico-Canada Agreement (USMCA), found that Canada’s practice of reserving most of the country’s dairy tariff-rate quotas (TRQs) to Canadian processors was in violation of the USMCA. In accordance with the USMCA, Canada maintains fourteen (14) dairy TRQs, which allow for reduced import tariffs on those products. According to the panel’s [final report](#), since 1995, Canada has reserved access to 85-100% of those dairy TRQs exclusively for Canadian dairy processors – a supply side party in Canada’s dairy market – disallowing equal TRQ access to retailers – a demand side party. The panel found that Canada’s practice of reserving TRQs for processors was in violation of USMCA [Article 3.A.2.11\(b\)](#) in failing to “ensure that” the country’s practice “does not ... limit access to an allocation to processors.” Thereafter, the Canadian government [issued](#) a proposal outlining new ways of allocating and administering Tariff Rate Quotas (TRQs) for U.S. dairy imports in order to comply with the recent USMCA panel ruling. In a [news release](#) dated March 3, 2022, the National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) expressed their concerns over the Canadian proposal, claiming that the proposed changes still do not offer fair treatment to U.S. dairy importers, and urged “the administration to demand that Canada go back to the drawing board until it can genuinely deliver on providing the U.S. dairy industry the full benefit of USMCA.” According to the [Edge Dairy Farmer Cooperative](#), “the proposed changes ... would not allow U.S. exporters to ship directly to the lucrative retail sector ...” and that “it [is] clear Canada is not seeking to provide actual market-based allocations.”

### **Additional Dairy Resources of Interest**

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Jan. 2022)

PSU Extension, [Dairy Revenue Protection](#) (Jan. 3, 2022)

Penn State Research, [Dairy farmers can adapt to climate change](#) (Jan. 5, 2022)

National Milk Producers Federation, *Dairy Defined Podcast*, [Price Forecast Positive for Dairy, NMPF’s Vitaliano Says](#) (Jan. 10, 2022)

[Agri-Pulse Open Mic Interviews, S. Dairy Export Council President and CEO Krysta Harden](#) (recorded Jan. 16, 2022)

Financial Post, [New Zealand cheers Canada’s loss in dairy dispute and calls for ‘significant reform’](#) (Jan. 17, 2022)



Dairy News, [Cheese Name Ruling Brings Hope](#) (Jan. 26, 2022)

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Feb. 2022)

PSU Extension, [Dairy Revenue Protection](#) (Feb. 1, 2022)

Agri-Pulse TV, [Digging into the Ag Export Supply Chain Crisis and How to Fix It](#), Webinar/panel discussions sponsored by U.S. Dairy Export Council and National Milk Producers Federation (recorded Feb. 1, 2022)

Lancaster Farming, [Pennsylvania Ag Department Says Dairy Premium Has Become Unfair](#), Phil Gruber (Feb. 23, 2022)

U.S. Dairy Exporter Blog, [What the U.S. Dairy Export Council Did to Help Lift 2021 Exports to New Highs](#) (Feb. 28, 2022)



## THE LIFT USDEC GIVES DAIRY EXPORTS

It was a banner year for U.S. dairy exports, with 2021 volume reaching a record 2.3 million metric tons (milk solids equivalent), a 10% increase over 2020. Value also hit an all-time high as sales jumped 18% to \$7.75 billion. The checkoff-founded U.S. Dairy Export Council paved the way as an exports success accelerator for our members, farmers and everyone in the U.S. dairy industry. The following numbers quantify what we did in 2021.

### WORKING FOR PROACTIVE TRADE POLICY

Led multi-pronged push to address shipping crisis, that cost U.S. dairy industry more than **\$1.3 BILLION.**



Secured House of Representatives passage of the Ocean Shipping Reform Act in December on a strong bipartisan vote of 364-60.

Sent **51 LETTERS** and submitted formal comments to U.S. and foreign officials calling for actions to expand market access opportunities, lower barriers to trade and keep trade flowing.



Warded off trade barriers in the EU, Colombia and Mexico to preserve export sales amounting to **\$1.9 BILLION.**



All-out, ongoing effort has included **12 MEETINGS** with high-ranking officials at the White House, Federal Maritime Commission, USDA and DOT and **13 SPECIFIC RECOMMENDATIONS** to the Administration to alleviate dairy supply-chain disruptions.

### KEEPING TRADE FLOWING



Answered more than **750** calls from USDEC members for technical and regulatory assistance.

Made **OVER 500 UPDATES** to the U.S. Dairy Export Guide, a comprehensive reference providing market access requirements for **90 COUNTRIES**. New Volume 3 and country dashboard pages made information gathering faster and easier.



Enabled release of **16** detained dairy shipments totaling **350 TONS** at a nearly **\$1M VALUE.**



Reviewed **317** **WORLD TRADE ORGANIZATION** notifications, **88** directly affecting U.S. dairy.

Dairy Management Inc. / National Milk Producers Federation, [Dairy Market Report](#) (Mar. 2022)



American Farm Bureau Federation, Market Intel, [Unwrapping USDA’s New Dairy Processing Cost Study and How it Could Impact Make Allowances](#) (Mar. 1, 2022)

Progressive Dairy, [2022 State of Dairy: A Melding of Moods and Concerns](#), Dave Natzke (Mar. 10, 2022)

**Authors**

Audry Thompson, Research Assistant  
Chloe Marie, Research Specialist  
Brook Duer, Staff Attorney

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**PENN STATE CENTER FOR  
AGRICULTURAL AND SHALE LAW**

329 Innovation Blvd., Suite 118  
University Park, PA 16802  
Phone: 814-865-4290  
Fax: 814-865-3851  
Website: [AgLaw.psu.edu](http://AgLaw.psu.edu)

**PROFESSIONAL STAFF**

<b>Center Director</b> Ross H. Pifer <a href="mailto:rpifer@psu.edu">rpifer@psu.edu</a>	<b>Staff Attorney</b> Jackie Schweichler <a href="mailto:jks251@psu.edu">jks251@psu.edu</a>
<b>Staff Attorney</b> Brook Duer <a href="mailto:dhd5103@psu.edu">dhd5103@psu.edu</a>	<b>Research Specialist</b> Chloe Marie, LL.M. <a href="mailto:cjm445@psu.edu">cjm445@psu.edu</a>

**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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